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Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW., Washington, DC
RESERVATIONS: 202–523–5240

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-047]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affect 13 counties in North Carolina and three counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective June 7, 1989. Consideration will be give only to comments received on or before August 7, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-047. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant that causes degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 *et seq.*, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined states for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in places designated as suppressive areas.

Designation of Areas as Suppressive Areas

We are amending the list of suppressive areas by adding areas in Cumberland, Greene, Harnett, Pender, Richmond, and Sampson Counties in North Carolina, and an area in Marlboro County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread, or is likely to spread, to certain areas beyond the outer perimeter of areas previously designated as suppressive areas. Therefore, those additional areas in these counties in North Carolina and South Carolina, which were previously nonregulated areas, are designated as witchweed suppressive areas. We are taking this action in order to prevent the spread of witchweed and to facilitate its eradication.

The regulations list the suppressive areas for each county. Non-farm areas, if any, are listed first; farms are then listed alphabetically.

Removal of Areas from List of Regulated Areas

We are also amending the list of suppressive areas by removing areas in Beaufort, Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Lenoir, Pender, Sampson, and Wayne Counties in North Carolina, and areas in Florence, Horry, and Marlboro Counties in South Carolina from § 301.80-2a of the regulations. As a result of this action, there are no longer any regulated areas in Beaufort County, North Carolina.

We are taking this action because we have determined that witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, we are removing these areas from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Because of the possibility that witchweed could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 533 to make it effective upon publication in the **Federal Register**. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an estimated annual effect on the economy of less than $4,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 477 of these entities by removing 472 entities from regulation and placing 5 new entities under regulation. We have determined that the 472 deregulated entities will realize combined annual savings of approximately $10,936, or $23.17 each, in regulatory and control costs. We estimate that the 5 newly regulated entities will need to invest a similar amount, approximately $675 each, per year, in order to comply with our regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

Accordingly, we are amending 7 CFR Part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of the provisions of this subpart; and these regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Highway 410 intersects the Bladen-Columbus County line, then south along this road to its junction with U.S. Highway 76, then west along U.S. Highway 76 to its junction with State Secondary Road 1356, then south along this road to its junction with the North Carolina-South Carolina border, where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of this road with State Highway 87.

The Harmon, Thelma, (formerly the Lloyd Spaulding farm) located in the southeast corner of the junction of State Secondary Roads 1726 and 1713.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of this road with State Secondary Road 1740.

The Jacobs, Mrs. Willie C., farm located on both sides of a farm road 0.5 mile southeast of its intersection with State Secondary Road 1713 at a point 2.7 miles northeast of the junction of this road with State Secondary Road 1001.

The Walters, Eugene, farm located on the southeast side of a farm road 0.2 mile southeast of its intersection with State Highway 131 at a point opposite the junction of this highway with State Secondary Road 1539.

Craven County. The Tripp, Dudley, farm located on the north side of State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along this highway to its intersection with the Fayetteville city limits, then south, east, and northeast along these city limits to its junction with U.S. Highway 301 north, then northeast along this highway to its junction with U.S. Interstate 95, then northeast along this interstate to its junction with U.S. Highway 13, then east and northeast along this highway to its intersection with the Cumberland-Sampson County line, then southerly along this county line to its junction with the Bladen-Cumberland County line, then westerly along this county line to its junction with the Cumberland-Robeson County line, then northwesterly along this county line to its junction with the Cumberland-Hoke County line, then northwesterly along this county line to the point of beginning.

The Contrell, C. T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Elliott, Lattie, farm located on the north side of State Secondary Road 1722 and 0.4 mile east of its junction with State Secondary Road 1714.

The Elliott, W. H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J. T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and 0.3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Ada H., farm located on the east side of State Secondary Road 1818 and 0.7 mile north of its intersection with U.S. Highway 13.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Melvin, Edith, farm located on the east side of State Secondary Road 1600 and 1.7 miles north of its intersection with State Secondary Road 1615.

The Powell, William Clinton, farm located on the south side of State Secondary Road 1722 and 0.3 mile east of its junction with State Secondary Road 1714.

The Pruitt, K. D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Vann, W. E., farm located on the northwest side of State Secondary Road 1819 at its junction with State Secondary Road 1813.

The Williams, Maggie, farm located on the north side of State Secondary Road 1719 and 1.2 miles north of its intersection with State Secondary Road 1720.

Duplin County. The Dobson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its intersection with State Secondary Road 1737.

The Dodson, Twillie, farm located on the south side of State Secondary Road 1912 and 0.7 mile west of the junction of this road and State Highway 11.

The Grand, Pietro, farm located 0.2 mile southwest of the end of State Secondary Road 1981.

The Hamilton, John, farm located on both sides of State Secondary Road 1921 and 1.4 miles southeast of the junction of this road and State Secondary Road 1922.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Jones, H.A., No. 2, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of its intersection with Northwest Cape Fear River.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

The Thomas, Douglas M., farm located on the southwest side of State Secondary Road 1700 and 0.4 mile northwest of the intersection of this road with State Secondary Road 1728.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of the intersection of this road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of State Highway 24 and the east side of State Secondary Road 1737 at the intersection of this road.

Greene County. The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Dun, Jo Estate farm located 1.0 mile south of Maury on the northeast side of State Secondary Road 1441 and 0.5 mile west of its junction with State Secondary Road 1413.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Lane, Sylvester, farm located on both sides of State Secondary Road 1400 and 2.8 miles southeast of its junction with U.S. Highway 13.

The Nethercutt, Lawrence, farm located on the north side of State Secondary Road 1400 and 3.0 miles southeast of its junction with U.S. Highway 13.

The Warren, Francis, farm located on the west side of State Secondary Road 1418 and 0.3 mile north of its junction with State Secondary Road 1419.

Harnett County. The Byrd, Lee, farm located on both sides of State Secondary Road 1108 and north of its junction with State Secondary Road 1110.

The Cook, A.L., farm located on the east side of State Secondary Road 1201 and 0.8 mile south of the junction of this road with State Secondary Road 1203.

The Dove, Ira, farm located on the southeast side of State Secondary Road 1105 and 0.7 mile southwest of its junction with State Highway 24/27.

The Estate, Walter, farm located on the west side of State Secondary Road 2031 and 0.2 mile north of its junction with State Secondary Road 2039.

The Farrel, David, farm located on the west side of State Secondary Road 1201 and 0.2 mile northwest of its junction with State Highway 27.

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of this road with State Secondary Road 1139.

The Graham, Ralph, farm located on both sides of State Secondary Road 1200 and west of its junction with State Highway 24/27.

The Grey, Charlie, farm located on the west side of State Secondary Road 1111 and 0.6 mile south of its junction with State Highway 24.

The Hicks, Vashti, farm located on the south side of State Secondary Road 2038 and 0.4 mile west of its junction with State Secondary Road 2031.

The Hobbs, Marvin, farm located on the southwest side of State Secondary Road 2072 and 1.0 mile northwest of its junction with State Secondary Road 2033.

The Hobbs, R.C., farm located on the southwest side of State Secondary Road 2072 and 1.1 miles northwest of its junction with State Secondary Road 2033.

The Holder, Charlie, farm located on the south side of State Secondary Road 1120 and 0.3 mile west of its junction with State Secondary Road 1121.

The McCoy, Mack, farm located on the northwest side of State Secondary Road 1105 and 0.7 mile southwest of its junction with State Highway 24/27.

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of its junction with State Secondary Road 1202.

The Pennington, Albert J., farm located on the southwest side of State Secondary Road 1110 and 0.3 mile east of its junction with State Secondary Road 1108.

The Spaulding, James, farm located on the north side of State Secondary Road 1141 and 1.3 miles east of its junction with State Secondary Road 1139.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of its junction with State Secondary Road 1117.

The Walker, N.A., farm located on the east side of State Secondary Road 2042 and 0.9 mile southwest of its junction with State Secondary Road 2026.

Hoke County. The Bryant, James, farm located on the south side of State Secondary Road 1003 and 0.8 mile west of its junction with State Secondary Road 1440.

The Butler, James, farm located on the southwest side of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1429.

The Fowler, Arne, farm located on the north side of State Secondary Road 1203 and 0.2 mile northeast of its junction with State Secondary Road 1207.

The Hough, E.J., farm located on both sides of State Secondary Road 1413 and 0.4 mile east of its junction with State Secondary Road 1426.

The Hough, E.J., farm located on both sides of State Secondary Road 1413 and 0.4 mile east of its junction with State Secondary Road 1426.

The Johnson, George, farm located on the south side of State Secondary Road 1219 and

0.3 mile east of its junction with State Secondary Road 1218.

The Kelton, Worthy, farm located on the west side of State Secondary Road 1461 and 0.4 mile north of its junction with State Secondary Road 1422.

The Locklear, Alton, farm located on the northeast side of State Secondary Road 1448 at its junction with State Secondary Road 1436.

The McMillan, James, farm located 0.3 mile south of the junction of State Secondary Road 1113 with State Secondary Road 1130.

The McNeill, Ken, farm located on the west side of State Secondary Road 1429 at the dead end of this road.

The McPhatter, Neil, farm located 0.1 mile west of State Secondary Road 1102 and 0.3 mile northwest of its junction with State Secondary Road 1100.

The McQueen, Rosetta, farm located on the south side of State Secondary Road 1134 and 0.4 mile southeast of its junction with State Secondary Road 1135.

The McRae, Mary Della, farm located on the south side of State Secondary Road 1134, 0.7 mile east of the junction of this road with State Secondary Road 1116.

The Melvin, Sylvester, farm located on the north side of State Secondary Road 1003 and 0.4 mile east of its junction with State Secondary Road 1427.

The Oldham, James, farm located on the west side of State Secondary Road 1200 and 0.1 mile north of its junction with State Secondary Road 1201.

The Sandy, L.A., farm located 0.5 mile north of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1431.

The Sandy, Lewis, farm located on the east side of State Secondary Road 1429 at the dead end of this road.

Lenoir County. The Dawson, Wayne, farm located on State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and 0.5 mile east of its junction with State Secondary Road 1720.

The Hill, Nannie T., farm located in the east junction of State Highway 55 and State Secondary Road 1161.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its junction with State Secondary Road 1318.

The Rouse, James, farm located on the southeast side of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1307 and State Secondary Road 1324.

The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161, 0.9 mile east of its junction with State Highway 55.

Pender County. The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of its junction with State Secondary Road 1107.

The Barnhill, Frank, farm located on the south side of State Highway 210 and 0.1 mile of the junction of this highway and State Secondary Road 1130.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Burns, T.C., farm located 0.8 mile northeast of State Secondary Road 1104 and 1.0 mile northwest of the junction of this road and State Secondary Road 1107.

The Corbett, Robert L., farm located on both sides of State Highway 210 and 0.5 mile northwest of its junction with State Secondary Road 1130.

The Dees, Betty, farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F.P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Henry, Mary E., farm located 0.1 mile south of State Secondary Road 1130 and 0.2 mile east of its intersection with the Pender-Bladen County line.

The Hicks, Carol, farm located on the south side of State Highway 210 and 0.6 mile east of its intersection with U.S. Highway 117.

The Hutcheson, Katie, farm located on a field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Kea, Nora, farm located 0.1 mile west of the west end of State Secondary Road 1108.

The Keith, Alton, estate located on the south side of State Highway 210 and 0.3 mile east of the junction of this road and State Secondary Road 1130.

The Keith, F.R., farm located on both sides of State Secondary Road 1130 and 0.7 mile west of the junction of this road and State Highway 210.

The Keith, Sprunt, farm located on the southwest side of State Secondary Road 1130 and at the Pender-Bladen County line.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Larkins, C.E., farm located on the southwest side of State Secondary Road 1102 and 0.2 mile southeast with the Pender-Bladen County line.

The Larkins, Maggie, estate located on the northeast side of State Secondary Road 1102 and 0.2 mile southeast along this road to its intersection with the Pender-Bladen County line.

The Malloy, Pete, No. 1 farm located on both sides of State Highway 210 and the east side of State Secondary Road 1599.

The Malloy, Pete, No. 2 farm located on both sides of State Highway 210 and 1.3 miles east of the intersection of this highway and U.S. Highway 117.

The Manuel, George, farm located 0.1 mile south of State Highway 210 and 0.2 mile west of its junction with State Secondary Road 1103.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Nixon, Rosa, farm located on both sides of State Highway 210 and on the west side of State Secondary Road 1599.

The Peterson, Grady, farm located on the north side of a field road 0.2 mile east of State Secondary Road 1104 and northeast of its intersection with Lyon Canal.

The Pridgen, Pete, farm located on the southwest side of State Secondary Road 1103 and 0.3 mile southeast of its junction with State Highway 210.

The Taylor, Bill, farm located on the west side of State Secondary Road 1104 and 2.0 miles south of the northernmost intersection of this road with State Secondary Road 1103.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1108 and 0.5 mile northwest of its junction with State Secondary Road 1107.

The Williams, Leroy, farm located on the south side of State Secondary Road 1600 and at the south end of State Secondary Road 1599.

Richmond County. The Covington, Tally, farm located on a private road 0.1 mile north of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harnett County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 242, then south along this highway to its junction with U.S. Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1004, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary

Road 1927, then southerly along this road to the point of beginning.

The Darden, Jessie, farm located on the southwest side of State Secondary Road 1758 and 1.0 mile west of its junction with State Secondary Road 1742.

The Hawley, William, farm located on the southwest side of State Secondary Road 1731 and 2.5 miles west of its intersection with State Secondary Road 1725.

The Jackson, Tony, farm located on the northwest side of the intersection of State Secondary Roads 1740 and 1742.

The Precise, Stewart, farm located on both sides of State Secondary Road 1757 and 0.5 mile north of its junction with State Secondary Road 1731.

The Shipp, Estelle, B., farm located on the southwest side of State Secondary Road 1758 and 0.5 mile west of its junction with State Secondary Road 1742.

The Swain, Robert W., farm located on the northeast side of State Secondary Road 1740 and 1.0 mile northwest of its intersection with State Secondary Road 1742.

The Weeks, Glenn, farm located on the south side of State Secondary Road 1737 and 1.1 mile east of U.S. Highway 701.

Wayne County. The Bowden, B. J., farm located on the west side of State Secondary Road 1931 and 0.2 mile south of the intersection of this road and State Secondary Road 1120.

The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of the intersection of this road and State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of the junction of this road and State Highway 55.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 mile south of the junction of this road and State Secondary Road 1914.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of this road and State Secondary Road 1938.

The Grady, Annie, farm located on the west side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 mile north of the junction of this road and State Secondary Road 1914.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 mile east of the junction of this road and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 mile west of the junction of this road and State Secondary Road 1913.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, Thedy, Estate, farm located on the west side of State Secondary Road 1913, 0.5 mile south of the junction of this road and State Highway 111.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 mile east of the junction of this road and State Secondary Road 1915.

The Raynor, Early, No. 1., farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of the junction of this road and State Secondary Road 1934.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Wayne County Landfill property located on the southeast side of State Secondary Road 1726 and 0.5 mile northeast of its junction with State Highway 111.

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Dillon County. The entire county.

Florence County. The McAllister, Armstrong, farm located at the end of a dirt road and 0.4 mile northwest of its junction with another dirt road, then south along this dirt road to its junction with another dirt road, then westerly along this dirt road to its junction with State Secondary Highway 34, this junction being 1.1 miles southeast of the junction of State Secondary Highway 149 with State Secondary Highway 34.

The Parker, Boston, farm located on the northwest side of State Secondary Road 791 and 0.3 mile northeast of its junction of State Secondary Road 791 with State Secondary Road 732, this junction being 1.7 miles northeast of the junction of State Secondary Road 732 with State Highway 51.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along this highway to its intersection with State Secondary Highway 306, then west along this highway to its intersection with State Secondary Highway 142, then south along this highway to its junction with State Primary Highway 9, then northwest along this highway to its intersection with State Secondary Highway 59, then southwest and south along this highway to its junction with State Primary Highway 917, then southwest along this highway to its intersection with State Secondary Highway 19, then south and southeast along Highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along this highway to its intersection with State Primary Highway 9, then southeast and south along this highway to its intersection with the Waccamaw River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to its intersection with U.S. Highway 17, then southwest along this highway to its junction with State Primary Highway 90, then west along this highway to its intersection with a dirt road known as Telephone Road, this intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along this swamp to its junction with the Waccamaw River, then west along this river to its intersection with Stanley Creek, then north along this creek 1.6 miles, then northwest along this creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of this creek, and extending north to the junction of this line with State Primary Highway 905, then southwest along this highway to its junction with State Secondary Highway 19, then north along this highway 2.4 miles to its junction with a dirt road.

Then southwest along this road to its intersection with Maple Swamp, then north along this swamp to its intersection with State Secondary Highway 65, then southwest along this highway to its junction with U.S. Highway 701, then south along this highway to its intersection with U.S. Highway 501, then northwest along this highway to its intersection with State Secondary Highway 548, then west along this highway to its junction with a dirt road, then west along a dirt road to its junction with State Secondary Highway 78, then north along this highway to its junction with State Secondary Highway 391, then northeast along this highway to its junction with U.S. Highway 501, then southeast along this highway to its junction with State Secondary Highway 591, then north along this highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along this dirt road to its junction with State Primary Highway 319, then northwest along this highway to its junction with State Secondary Highway 131, then east and north along this highway to its intersection with Loosing Swamp, then west and northwest along this swamp to its intersection with State Secondary Highway 45, then southwest along this highway to its junction with State Secondary Highway 129, then northwest along this highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection, with Little Pee Dee River, then northwest along this river to its junction with the Lumber River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles southwest and west of the junction of this dirt road and State Secondary Highway 99,

this junction being 1.75 miles north of the junction of this highway and State Secondary Highway 97.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of this dirt road with rural paved road No. 109, this intersection being 2.25 miles northeast of the junction of rural paved road No. 109 with rural paved road No. 79.

The Edge, Nina L., farm located on the west side of a dirt road and 0.8 mile southeast of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this second junction being 0.8 mile southwest of the junction of this highway and State Secondary Highway 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of this highway and State Secondary Highway 377.

The Richardson, Talmage, farm located on the north side of a dirt road and 1 mile southwest of the junction of this dirt road with State Secondary Highway 99, this junction being 1.75 miles north of the junction of State Secondary Highway 99 and State Secondary Highway 97.

Marion County. The entire county.

Marlboro County. The Harrison, Nancy, Estate farm located on the north side of State Secondary Road 299 and 0.2 mile east of its intersection with State Highway 38.

Done in Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13473 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 6908S]

General Administrative Regulations; Implementation of Disaster Assistance Act of 1988

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), at the direction of the Secretary of Agriculture, hereby issues a new Subpart N in Chapter IV of Title 7 of the Code of Federal Regulations for the purpose of implementing the Disaster Assistance Act of 1988 (the "ACT"). The intended effect of this rule is to set forth the procedures for implementing the requirements of the Disaster Assistance Act with respect to a reduction in commissions paid to private insurance agents, brokers or companies, on contracts for crop insurance coverage entered into under the provisions of the ACT.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This rule is made necessary by the enactment of section 207 of the Disaster Assistance Act of 1988 which mandates the purchase of crop insurance coverage with respect to certain benefits under the ACT.

In accordance with section 207(c)(3) of the ACT, the Secretary of Agriculture is required to provide by regulation for a reduction in the commissions paid to private insurance agents, brokers, or companies on crop insurance contracts entered into under this section sufficient to reflect that such insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company. This rule is for the purpose of carrying out that directive.

Under the provisions of section 234 of the ACT, publication for notice and comment is omitted so that these regulations may be made effective as quickly as possible. All entities affected by this rule were advised of the provisions prior to the October 1, 1988, effective date.

List of Subjects in 7 CFR Part 400

Crop insurance; General Administrative Regulations; Implementation of Disaster Assistance Act of 1988.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith issues a new Subpart N in Part 400 of Title 7 of the Code of Federal Regulations, effective October 1, 1988.

Subpart N is added to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart N—Disaster Assistance Act of 1988; Procedures for Implementation

Sec.

Subpart N-Disaster Assistance Act of 1988; Procedures for Implementation

§ 400.250 General statement.

The Disaster Assistance Act of 1988 (the ACT) requires that, subject to certain limitations in the ACT, producers on a farm, in order to be eligible to receive a disaster payment under the provisions of the ACT, or an emergency loan under the provisions of the Rural Development Act (7 U.S.C. (1961) *et seq.*) for crop losses due to drought, hail, excessive moisture, or related condition in 1988, or forgiveness of the repayment and advance deficiency payments under subsection 201(b) of the ACT, must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) for the 1989 crop of the

commodity for which such payments, loans, or forgiveness are sought. The ACT also requires that regulations be promulgated to provide for a reduction in the commissions paid to private insurance agents, brokers, or companies on contracts for crop insurance entered into under the ACT sufficient to reflect that such insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company.

§ 400.251 Purpose and applicability.

(a) It is the purpose of these regulations to provide the procedures for implementing the provisions of the ACT by requiring a reduction in the compensation rate to the agent, broker, or company under contract or agreement with FCIC.

(b) The provisions contained in this subpart shall be applicable to all holders of an Agency Sales and Service Contract (herein referred to as "agency") or a Reinsurance Agreement (herein referred to as "company") with FCIC, and shall be applicable on all crop insurance contracts for 1989 crops entered into to comply with the provisions of section 207 of the Disaster Assistance Act of 1988, as set forth in subsections (c) (2) and (3) of said ACT.

§ 400.252 Implementation and expense reimbursement.

Crop insurance coverage, required by the ACT to be made available to any producer identified by the Agricultural Stabilization and Conservation Service (ASCS) as having suffered a crop loss of 65 percent or more, unless the requirement for such crop insurance coverage is waived under the provisions of the ACT, may be made available through any agent or company under the terms and conditions of the contract or agreement such agent or company may have with FCIC. Agents under an Agency Sales and Service Contract and companies under a Reinsurance Agreement with FCIC are required to sign an amendment to the contract or agreement agreeing to a reduction in expense reimbursement for evidence of a policy of crop insurance issued under the requirements of the ACT. Such expense reimbursement:

(a) Will not be reduced if the producer:

(1) Had crop insurance under the Federal Crop Insurance Act during the 1988 crop year for which the payment or other benefit is being sought under the ACT and said insurance has been continued into the 1989 crop year;

(2) Furnishes evidence of insurance coverage (copy of the completed, filed application or policy confirmation) for the 1989 crop year for the crop for which the payment or other benefit under the ACT is being requested, to the ASCS county office at the time of application for the disaster payment or other benefit under the ACT; or

(3) Has, under the provisions of the ACT, received a waiver of the requirement to obtain crop insurance coverage.

(b) Will be reduced in the amount of 3 percent (3%) of base premium when the producer, applying for disaster payment at the ASCS Office without evidence of the required crop insurance coverage, is required by the ASCS or the Farmer's Home Administration (FmHA) county committee to obtain such crop insurance coverage for crop year 1989 in order to receive the payment or other benefit sought under the ACT.

Done in Washington, DC, on June 1, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-13530 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 403

[Doc. No. 6910S]

Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their peach crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issued as it might apply to all policyholders.

Accordingly, FCIC herein amends the Peach (Fresh) Crop Insurance

Regulations (7 CFR Part 403) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

On Monday, April 10, 1989, FCIC published a notice of proposed rulemaking in the Federal Register at 54 FR 14240, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the proposed rule published at 54 FR 14240 as a final rule without change.

List of Subjects in 7 CFR Part 403

Crop insurance, Peaches.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1990 and succeeding crop years, in the following instances.

PART 403—[AMENDED]

1. The authority citation for 7 CFR Part 403 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Paragraph 7(d) of the Peach (Fresh) Crop Insurance Regulations (7 CFR 403.7) is amended by revising subparagraph 5.c.(1) to read as follows:

§ 403.7 The application and policy.

* * * * *

(d) * * *

5. *Annual premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC, on May 31, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-13531 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-88-127FR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Additional Reporting Requirements for Handlers)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends procedures which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. This rule was recommended by the Navel and Valencia Orange Administrative Committees (committees), the agencies responsible for local administration of the orders.

This change requires handlers of navel and Valencia oranges to submit information to the committees reflecting the quantity of oranges harvested on a weekly basis. Receiving this information on a weekly basis will enable the committees to more efficiently carry out their auditing functions to monitor handler compliance with the marketing orders.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), both as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three fiscal years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

This final rule makes changes to the administrative rules and regulations of the navel and Valencia orange marketing orders. These changes require handlers to report information on oranges harvested to the committees on a weekly, rather than periodic, basis.

Sections 907.72 and 908.72 of the navel and Valencia orange marketing orders, respectively, require that upon request of the committees, with the approval of the Secretary of Agriculture, every person subject to regulation under the navel and Valencia orange marketing orders shall furnish to the committees, in such manner and at such times as they may prescribe, such information, in addition to that already required by the order, as will enable the committees to perform their duties. Thus, the committees have the authority to request additional information from handlers to help the committees perform their duties under their respective orders.

Sections 907.142 and 908.142 of the administrative rules and regulations of the orders currently require handlers, at the request of the committees, to submit information on oranges harvested and other information on Handler Report of Picks and Estimates forms (Base Estimate Forms No. 1). The information required on these forms must be provided for each grower who delivers oranges to the handler, broken down by individual groves. The new weekly

reporting requirment requests only gross figures of the number of cartons harvested by all of a handler's growers for the preceding week and cumulatively for the season.

In the past, because of the detailed nature of the report, the committees have requested submission of the Handler Report of Picks and Estimates only three or four times during the marketing year. This periodic information on oranges harvested is used to determine the status of the industry and individual handlers at a given point in the marketing year regarding the quantity of oranges harvested and the quantity remaining for harvest. The new weekly reporting requirement will be met by using less detailed forms. When information on the quantity of oranges harvested is submitted on a weekly basis, however, it will improve the data base available to the committees and enable them to more closely monitor the flow of oranges from grower to handler to final disposition. For auditing purposes, this comparison could help identify marketing order violations if discrepancies in the figures occur.

It is estimated that the additional information required by this rule will take less than five minutes to complete and should present no significant burden to the approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders.

Therefore, the committees recommended amending §§ 907.142 and 908.142 of the rules and regulations under the navel and Valencia orange marketing orders, respectively, to require handlers to submit information regarding the quantity of oranges harvested on a weekly basis on new Navel Orange Administrative Committee/Valencia Orange Administrative Committee (N.O.A.C./V.O.A.C) Forms No. 37. These forms will be printed on the lower, currently unused, portion of N.O.A.C./V.O.A.C. Forms No. 4, which are weekly reports of orange shipments from handlers.

Thus, sections 907.142 and 908.142 of the navel and Valencia marketing orders are amended by redesignating paragraphs (a) as (a)(2) and adding paragraphs (a)(1). In addition, revisions of paragraphs (b) provide gender neutral language.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a signficant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on November 7, 1988, (53 FR 44925). Written comments were invited from interested persons for 30 days, until December 7, 1988. Two comments were received: From Richard J. Pescosolido of Foothill Farms, an orange grower and alternate committee member, and from James A. Moody, writing in behalf of Sequoia Orange Company, for which he is counsel.

Mr. Pescosolido objected to the manner in which the proposal was made and especially that it was offered by the committees' manager. Mr. Moody also objected to the fact that the rule was forumlated and proposed to the committees by the manager.

It is normal procedure for the professional, paid staff of marketing order committees, including their managers, to develop proposals for information gathering since they regularly use such information in meeting the various requirements of the orders and in preparing various reports and statistical information for the committees. It is a function of the committees to accept, modify or reject such proposals presented to them. In this case, the committees endorsed the suggested requirement and adopted it as a proposal that would improve the committees' ability to administer their respective orders. The committees then recommended that the Department adopt the proposals as amendments to the regulations implementing the Order.

Mr. Pescosolido further commented that no hearing was held to establish a record on the subject. However, hearings are not required for informal rulemaking actions.

Mr. Pescosolido objected that no advance notice was given to growers, handlers or committee members, and that the meeting, because it was held in Los Angeles, took place away from all growers and handlers. Mr. Moody also asserted that the proposal was not given wide notice and that its presentation at the Los Angeles meeting prevented interested parties from examining its merits or faults. However, Los Angeles is the normal location for a majority of these committee meetings. The proposal was presented at a joint meeting of the N.O.A.C./V.O.A.C. These committees are made up of growers, handlers, and representatives of the public. Committee members are nominated by all California/Arizona navel and Valencia producers and handlers to be their representatives. The committees responded to the manager's suggestion of this rule by voting to adopt it. They recommended that it be made effective under the marketing orders. A proposed rule was published in the **Federal Register** and public comments were invited for a period of 30 days, during which other interested individuals had the opportunity to comment on the proposed requirement.

Mr. Pescosolido and Mr. Moody expressed concern about protecting the confidentiality of information gathered. Sections 907.73(d) and 908.73(d) of the marketing orders deal with the issue of confidentiality and outline protections and limitations on disclosure of information. In addition, section 608(d)(2) of the Agricultural Marketing Agreement Act of 1937, as amended, provides: "* * * all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information * * * shall be kept confidential by all officers and employees of the Department of Agriculture * * *" (7 U.S.C. 608(d)(2)). These safeguards are designed and implemented to protect against divulgence of confidential information.

Mr. Pescosolido noted that the Florida and Texas orange marketing orders do not include a provision such as that contained in this rule, and claimed that approval of the rule would discriminate against California/Arizona citrus growers. The Florida and Texas marketing orders were promulgated on the basis of separate rulemaking proceedings and are different in that they do not utilize prorate regulation, and must therefore be differently administered.

Messrs. Pescosolido and Moody also contended that the information contained in the weekly reporting requirement, if publicly distributed, would give buyers knowlege of inventories held by handlers and allow them to manipulate prices downward by withholding orders. Mr. Moody further stated that any such release would only serve to strengthen the bargaining position of buyers without offsetting benefits to growers and handlers. The supplementary information section of the proposed rule stated that the information on oranges harvested could be included in weekly Handler Bulletins. While we believe that Messrs. Moody's and Pescosolido's comments in this regard are unfounded, upon further analysis and review, we believe that it is not necessary to publish such information in weekly Handler Bulletins. Therefore, information collected on oranges harvested will not be distributed to the industry on a weekly basis.

Mr. Moody questioned whether the proposal would improve the data base

available to the committees and enable the committees to more closely monitor the flow of oranges from grower to handler to final disposition. In addition, he asserted that the collection of additional data will not aid in the detection of marketing order violations. We disagree with these comments. The collection of additional information will improve the committees' ability to administer their respective orders. Further, additonal information will provide a more frequent check on the flow of product through the marketing system and the Department believes that illegal diversions should be more quickly and precisely identified.

For the reasons stated above, Mr. Pescosolido's and Mr. Moody's objections are denied.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3504], the information collection provisions contained in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control nos. 0581–0116 (navel oranges) and 0581–0121 (Valencia oranges).

After consideration of all relevant matter presented, including the committees' recommendation, the comments received, and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navels, Oranges, Valencias.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 907.140 of this part, submit to the committee each Friday on N.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the fiscal year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department reprsentative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handler's control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a completed N.O.A.C. Form No. 29—Inventory Report of Navel Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 908.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 908.140 of this part, submit to the committee each Friday on V.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the fiscal year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handler's control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a completed V.O.A.C. Form No. 29—Inventory Report of Valencia Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

Dated: June 2, 1989.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–13465 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 915

[Docket No. FV–89–045]

Avocados Grown in South Florida; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule changes minimum maturity requirements currently in effect on a continuous basis for Florida and imported avocados. The rule changes the maturity shipping schedules for the Hardee, Nadir, and Pinkerton varieties of avocados, based on maturity test data developed for these varieties last season. This rule also changes the maturity schedule in Table I of the regulation to synchronize it with the 1989–90 calendar years. This action is designed to promote orderly marketing conditions for Florida and imported avocados in the interest of producers and consumers, and provide fresh markets with mature fruit to create and maintain consumer satisfaction and sales.

DATES: Section 915.332 becomes effective June 7, 1989. This section is applicable to avocados imported into the United States under § 944.31 as of June 12, 1989. Comments which are received by July 7, 1989 will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended [7 CFR Part 915], regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the avocado handlers, importers, and producers may be classified as small entities.

Fresh Florida avocado shipments are projected at 1,220,000 bushels (55 pounds net weight) for the 1989–90 season, compared with 1,057,618 bushels shipped in 1988–89, 1,129,587 bushels shipped in 1987–88, 956,217 bushels shiped in 1986–87, and 1,110,130 bushels shipped in 1985–86. Florida avocados are usually shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments occurring from July through December. Florida avocados compete primarily with avocados produced in California, with estimated shipments of about 5,284,465 bushels during the 1988–89 California shipping season. Avocado imports into the United States are estimated at 30,539 bushels for the 1988–89 season.

Section 915.332 specifies continuous maturity requirements for fresh shipments of avocados grown in South Florida. The maturity requirements are designed to make sure that all of the Florida avocados shipped are mature enough the complete the ripening process, to improve buyer confidence in the marketplace, and to foster increased consumption. The maturity requirements are in terms of color for certain varieties which turn red or purple when mature, and in terms of minimum weights or diameters for specified time periods during the shipping season for some 60 varieties and two seedling types of Florida grown avocados. The time periods are for seven-day increments, beginning on Monday of each week and ending on Sunday. A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 [7 CFR Part 915]. Similar maturity requirements have been in effect for several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of the avocado crop.

Some Florida avocado shipments are exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing are not covered by the maturity requirements.

On April 12, 1989, the Avocado Administrative Committee (committee) recommended the changes in the maturity requirements. The committee works with the Department in administering the marketing agreement and order program. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at the these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Reflecting the committee's recommendation, this action revises Table I in § 915.332(a)(2) to change the maturity requirements for the Hardee, Nadir, and Pinkerton varieties of avocados, based on last season's test data on the maturity characteristics of these varieties. The test data indicate that the Hardee and Nadir varieties mature later in the season, the Hardee variety matures at a lower weight, and the Pinkerton variety matures sooner in the season than the dates currently reflected in the shipping schedule. In recognition of these factors, the seasonal shipping schedule for the Hardee variety is shifted two weeks later into the season, with the starting date moved from the second Monday in June to the fourth Monday in June. Also for the Hardee variety, the minimum weight requirement is reduced by two ounces, with starting minimum weight reduced from 18 to 16 ounces. For the Nadir variety, the shipping schedule is shifted one week later into the season, with the starting date moved from the third Monday in June to the fourth Monday in June. For the Pinkerton variety, shipments will be permitted one week earlier beginning the first Monday in October. Also, this action makes calendar date adjustments in the varietal shipping schedules in the Florida avocado maturity regulation to synchronize them with the 1989–90 calendar years. These changes further the marketing goals of the industry by preventing the shipment of immature avocados to the fresh market.

Section 8e of the Act [7 U.S.C. 608e–1] requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. The Act further provides that the requirements on imports shall not become effective until giving not less than three days notice.

Avocado import maturity requirements are in effect on a continuous basis under § 944.31 [7 CFR Part 944], issued under section 83 of the Act. That section provides that minimum weight and diameter maturity requirements for avocados imported into the United States from northern hemisphere countries be the same as such maturity requirements specified in § 915.332 for Florida avocados and that the requirements contained in § 915.332(a)(2) do not apply to imported avocados grown in the southern hemisphere. Since this action changes the minimum weight and diameter maturity requirements for Florida produced avocados, these same changes apply to imported avocados grown in northern hemisphere countries. No change is needed in the text of the import regulation by this action.

Further, avocado import grade requirements are currently in effect on a continuous basis under § 944.28 [7 CFR Part 944]. Such requirements specify that all avocados imported into the United States must grade a least U.S. No. 2, as appear in § 915.306. This action does not change the requirements concerning avocados grown in the production area. Accordingly, § 944.28 of the regulations is not affected.

The avocado maturity and grade import regulations both contain an exemption provision which permits persons to import up to 55 pounds of avocados exempt from such import requirements.

The maturity requirements, specified herein, reflect the committee's and the Department's appraisal of the need to change the maturity requirements applicable to domestic and import shipments of avocados. Therefore, the Department's view is that these changes will not adversely impact producers, handlers, and importers. The application of the maturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee considers the Florida avocado maturity requirements to be necessary to improve grower returns. Although compliance with these maturity requirements will affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Avocado handlers are aware of this action which was recommended by the committee at a public meeting; (2) the changes synchronize the shipping periods for the two varieties beginning in May in the maturity table with the 1989–90 calendar years, and changes the starting dates for two varieties which begin shipping in mid-June; (3) the avocado import requirements changes are mandatory under section 8e of the Act; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Marketing agreements and orders, avocados, Florida.

For the reasons set forth in the preamble, 7 CFR Part 915 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.332 is amended by revising Table I in paragraph (a)(2) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Kosel	3rd Mon. May	4th Sun. May	16	
	5th Mon. May	2nd Sun. June	13	
Arue	3rd Mon. May	4th Sun. May	16	
	5th Mon. May	1st Sun. July	14	3 3/16
Donnie	4th Mon. May	1st Sun. June	16	3 5/16
	1st Mon. June	1st Sun. July	14	3 5/16
Dr. Dupuis #2	5th Mon. May	2nd Sun. June	16	3 9/16
	2nd Mon. June	1st Sun. July	14	3 7/16
	1st Mon. July	3rd Sun. July	12	3 3/16
Fuchs	1st Mon. June	3rd Sun. June	14	3 3/16
	3rd Mon. June	1st Sun. July	12	3
K–5	2nd Mon. June	4th Sun. June	18	3 5/16
	4th Mon. June	2nd Sun. July	14	3 3/16
Pollock	3rd Mon. June	1st Sun. July	18	3 11/16
	1st Mon. July	3rd Sun. July	16	3 7/16
	3rd Mon. July	5th Sun. July	14	3 5/16
Simmonds	3rd Mon. June	1st Sun. July	16	3 5/16
	1st Mon. July	3rd Sun. July	14	3 7/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
West Indian Seedling [1]	3rd Mon. July	5th Sun. July	12	3 1/16
	3rd Mon. June	3rd Sun. July	18	
	3rd Mon. July	3rd Sun. Aug	16	
	4th Mon. Aug	3rd Sun. Sept	14	
Hardee	4th Mon. June	1st Sun. July	16	3 5/16
	1st Mon. July	2nd Sun. July	14	3 3/16
	2nd Mon. July	4th Sun. July	12	2 15/16
Nadir	4th Mon. June	1st Sun. July	14	3 5/16
	1st Mon. July	2nd Sun. July	12	3 1/16
	2nd Mon. July	3rd Sun. July	10	2 13/16
Gorham	1st Mon. July	3rd Sun. July	29	4 5/16
	3rd Mon. July	2nd Sun. Aug	27	4 3/16
Reuhle	1st Mon. July	2nd Sun. July	18	3 11/16
	2nd Mon. July	3rd Sun. July	16	3 9/16
	3rd Mon. July	5th Sun. July	14	3 7/16
	5th Mon. July	1st Sun. Aug	12	3 5/16
	1st Mon. Aug	2nd Sun. Aug	10	3 3/16
Biondo	2nd Mon. July	2nd Sun. Aug	13	
Peterson	2nd Mon. July	3rd Sun. July	14	3 8/16
	3rd Mon. July	4th Sun. July	12	3 5/16
	4th Mon. July	1st Sun. Aug	10	3 3/16
Bernecker	3rd Mon. July	5th Sun. July	18	3 9/16
	5th Mon. July	2nd Sun. Aug	16	3 5/16
	2nd Mon. Aug	4th Sun. Aug	14	3 1/16
Miguel (P)	3rd Mon. July	5th Sun. July	22	3 13/16
	5th Mon. July	2nd Sun. Aug	20	3 12/16
	2nd Mon. Aug	4th Sun. Aug	18	3 10/16
232	3rd Mon. July	5th Sun. July	14	
	5th Mon. July	2nd Sun. Aug	12	
Pinelli	3rd Mon. July	5th Sun. July	18	3 12/16
	5th Mon. July	2nd Sun. Aug	16	3 10/16
Trapp	3rd Mon. July	5th Sun. July	14	3 10/16
	5th Mon. July	2nd Sun. Aug	12	3 7/16
Nesbitt	3rd Mon. July	5th Sun. July	22	3 12/16
	5th Mon. July	1st Sun. Aug	16	3 5/16
	2nd Mon. Aug	3rd Sun. Aug	14	3 3/16
Beta	5th Mon. July	1st Sun. Aug	18	3 8/16
	1st Mon. Aug	4th Sun. Aug	16	3 6/16
Tonnage	5th Mon. July	2nd Sun. Aug	16	3 6/16
	2nd Mon. Aug	3rd Sun. Aug	14	3 4/16
	3rd Mon. Aug	4th Sun. Aug	12	3
Waldin	5th Mon. July	2nd Sun. Aug	16	3 9/16
	2nd Mon. Aug	4th Sun. Aug	14	3 7/16
	4th Mon. Aug	2nd Sun. Sept	12	3 4/16
Tower 2	5th Mon. July	2nd Sun. Aug	14	3 6/16
	2nd Mon. Aug	1st Sun. Sept	12	3 4/16
K-9	5th Mon. July	3rd Sun. Aug	16	
Christina	5th Mon. July	3rd Sun. Aug	11	2 14/16
Lisa (P)	1st Mon. Aug	2nd Sun. Aug	12	3 3/16
	2nd Mon. Aug	3rd Sun. Aug	11	3
Catalina	2nd Mon. Aug	4th Sun. Aug	24	
	4th Mon. Aug	3rd Sun. Sept	22	
Fairchild	2nd Mon. Aug	4th Sun. Aug	16	3 10/16
	4th Mon. Aug	2nd Sun. Sept	14	3 7/16
	2nd Mon. Sept	3rd Sun. Sept	12	3 4/16
Black Prince	2nd Mon. Aug	4th Sun. Aug	28	4 1/16
	4th Mon. Aug	2nd Sun. Sept	23	3 14/16
	4th Mon. Sept	1st Sun. Oct	16	3 9/16
Loretta	4th Mon. Aug	2nd Sun. Sept	30	4 3/16
	2nd Mon. Sept	1st Sun. Oct	26	3 15/16
Booth 8	4th Mon. Aug	3rd Sun. Sept	16	3 9/16
	3rd Mon. Sept	1st Sun. Oct	14	3 5/16
	1st Mon. Oct	3rd Sun. Oct	10	3 1/16
Booth 7	4th Mon. Aug	2nd Sun. Sept	18	3 13/16
	2nd Mon. Sept	4th Sun. Sept	16	3 10/16
	4th Mon. Sept	2nd Sun. Oct	14	3 5/16
Blair	4th Mon. Aug	2nd Sun. Sept	16	3 8/16
	2nd Mon. Sept	1st Sun. Oct	14	3 5/16
Booth 5	1st Mon. Sept	3rd Sun. Sept	14	3 5/16
	3rd Mon. Sept	1st Sun. Oct	12	3 6/16
Guatemalan Seedling [2]	1st Mon. Sept	1st Sun. Oct	15	
	1st Mon. Oct	1st Sun. Dec	13	
Marcus	1st Mon. Sept	3rd Sun. Sept	32	4 12/16
	3rd Mon. Sept	5th Sun. Oct	24	4 5/16
Brooks 1978	1st Mon. Sept	2nd Sun. Sept	12	3 4/16
	2nd Mon. Sept	3rd Sun. Sept	10	3 1/16
	3rd Mon. Sept	2nd Sun. Oct	8	2 14/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Rue	2nd Mon. Sept	3rd Sun. Sept	30	4 5/16
	3rd Mon. Sept	1st Sun. Oct	24	3 15/16
	1st Mon. Oct	3rd Sun. Oct	18	3 9/16
Collinson	2nd Mon. Sept	2nd Sun. Oct	16	3 9/16
Hickson	2nd Mon. Sept	4th Sun. Sept	12	3 1/16
	4th Mon. Sept	2nd Sun. Oct	10	3
Simpson	3rd Mon. Sept	2nd Sun. Oct	16	3 9/16
Choquette	4th Mon. Sept	3rd Sun. Oct	28	4 5/16
	3rd Mon. Oct	5th Sun. Oct	24	4 1/16
	5th Mon. Oct	2nd Sun. Nov	20	3 13/16
Hall	4th Mon. Sept	2nd Sun. Oct	26	3 15/16
	2nd Mon. Oct	4th Sun. Oct	20	3 9/16
	4th Mon. Oct	1st Sun. Nov	18	3 5/16
Winslowson	4th Mon. Sept	3rd Sun. Oct	18	3 13/16
Leona	4th Mon. Sept	2nd Sun. Oct	18	3 13/16
Lula	1st Mon. Oct	3rd Sun. Oct	18	3 11/16
	3rd Mon. Oct	5th Sun. Oct	14	3 1/16
	5th Mon. Oct	2nd Sun. Nov	12	3 3/16
Herman	1st Mon. Oct	3rd Sun. Oct	16	3 7/16
	3rd Mon. Oct	5th Sun. Oct	14	3 5/16
Pinkerton (CP)	1st Mon. Oct	3rd Sun. Oct	13	3 5/16
	3rd Mon. Oct	5th Sun. Oct	11	3
	5th Mon. Oct	2nd Sun. Nov	9	
Taylor	2nd Mon. Oct	4th Sun. Oct	14	3 5/16
	4th Mon. Oct	1st Sun. Nov	12	3 3/16
Ajax (B-7)	2nd Mon. Oct	5th Sun. Oct	18	3 13/16
Booth 3	2nd Mon. Oct	3rd Sun. Oct	16	3 7/16
	3rd Mon. Oct	5th Sun. Oct	14	3 5/16
Linda	5th Mon. Oct	3rd Sun. Nov	18	3 13/16
Buccaneer	5th Mon. Oct	4th Sun. Nov	13	3 5/16
Monroe	1st Mon. Nov	3rd Sun. Nov	26	4 3/16
	3rd Mon. Nov	1st Sun. Dec	24	4 1/16
	1st Mon. Dec	3rd Sun. Dec	20	3 13/16
	3rd Mon. Dec	5th Sun. Dec	16	3 5/16
Booth 1	2nd Mon. Nov	4th Sun. Nov	16	3 13/16
	4th Mon. Nov	2nd Sun. Dec	12	3 5/16
Zio (P)	2nd Mon. Nov	4th Sun. Nov	12	3 1/16
	4th Mon. Nov	2nd Sun. Dec	10	2 14/16
Wagner	3rd Mon. Nov	1st Sun. Dec	12	3 5/16
	1st Mon. Dec	3rd Sun. Dec	10	3 1/16
Brooksiate	2nd Mon. Dec	3rd Sun. Dec	18	3 13/16
	3rd Mon. Dec	4th Sun. Dec	16	3 9/16
	4th Mon. Dec	1st Sun. Jan	14	3 7/16
	2nd Mon. Jan	3rd Sun. Jan	12	3 5/16
	4th Mon. Jan	1st Sun. Feb	10	
Meya (P)	2nd Mon. Dec	4th Sun. Dec	13	3 3/16
	4th Mon. Dec	1st Sun. Jan	11	3
Reed (CP)	2nd Mon. Dec	4th Sun. Dec	12	3 1/16
	4th Mon. Dec	1st Sun. Jan	10	3 3/16
	2nd Mon. Jan	3rd Sun. Jan	9	3

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

* * * * *

Dated: June 2, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-13466 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-22-M

7 CFR Part 982

[Docket No. FV-89-019FR]

Filberts/Hazelnuts Grown in Oregon and Washington; Revisions of Administrative Rules and Regulations Concerning the Disposition of Substandard Filberts/Hazelnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington to remove a provision allowing for the disposition of small-sized filberts in export outlets and to add safeguards concerning the disposition of inshell or shelled substandard filberts/hazelnuts for animal feed or oil. The Filbert/Hazelnut Marketing Board (Board) unanimously recommended these changes to the rules and regulations. These changes are necessary in order to eliminate an outdated section in the rules and regulations and to ensure that inshell or shelled substandard filberts/hazelnuts are disposed of in proper outlets.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist,

Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 filbert/hazelnut producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of filbert/hazelnut handlers and producers may be classified as small entities.

This final rule will delete an unused section in the rules and regulations and add a new section concerning the disposition of inshell and shelled substandard filberts/hazelnuts.

The first change in the administrative rules and regulations of the marketing order will delete § 982.453 which previously authorized the disposition of inshell small-sized filberts/hazelnuts in export markets. The Board recommended that § 982.453 be deleted from the rules and regulations since the provision is no longer used by handlers. At the present time, the industry practice is to shell small-sized filberts/hazelnuts, with the intent of making minimum grade standards for shelled filberts/hazelnuts, instead of shipping them inshell into export markets. Inshell filberts/hazelnuts are substandard under § 982.45 of the marketing order if they do not meet the requirements of Oregon No. 1 grade and are not medium size as defined in the Oregon Grade Standards For Filberts In Shell.

The second change in the rules and regulations will add a monitoring procedure for the disposition of inshell and shelled substandard filberts/hazelnuts. The establishment of such a procedure is authorized pursuant to § 982.53 of the order. The Board has indicated that filbert/hazelnut production is increasing and, as a result, a larger quantity of inshell and shelled substandard filberts/hazelnuts and filbert/hazelnut waste is available for utilization. Currently, handlers dispose of shelled substandard filberts/hazelnuts for use as livestock feed, in feed products, or for crushing into oil. However, such disposition is not monitored by the Board. The Board has received a number of inquiries from handlers and users of substandard filberts/hazelnuts concerning the sale of substandard filberts/hazelnuts and filbert/hazelnut waste to be used in these outlets. The procedure authorized by this final rule will enable the Board to monitor the disposition of inshell and shelled substandard filberts/hazelnuts to ensure that these filberts/hazelnuts do not enter normal market outlets for merchantable filberts/hazelnuts. Merchantable filberts/hazelnuts are those that meet applicable inshell or shelled minimum grade requirements. This change will enable the industry to ensure the quality of inshell and shelled filberts/hazelnuts entering normal market outlets.

This rule establishes new reporting requirements. Under this action, users (crushers, livestock feed manufacturers, and livestock feeders) who are interested in purchasing substandard filberts/hazelnuts or filbert/hazelnut waste will be required to file F/H Form D with the Board in order to be approved and maintained on an approved list at the Board's office. The Board will have the authority to deny any user approval if the Board finds that such user is not complying with the proper procedures for disposition of the substandard filberts/hazelnuts and filbert/hazelnut waste.

A new F/H Form D will include the location and a description of the user's disposal facilities and a certification to the Board and the Secretary of Agriculture that the applicant will: (1) Crush, manufacture feed, or feed to livestock such substandard filberts/hazelnuts at the location specified by the user; (2) use such filberts/hazelnuts only for the purpose of crushing into oil, manufacturing into livestock feed or livestock feeding; (3) permit the inspection of substandard filberts/hazelnuts received by the user and also the inspection of the user's premises; and (4) keep records of receipts, holdings, and usage of substandard filberts/hazelnuts for two years after the end of each marketing year and make such records available for inspection by representatives of the Board or the U.S. Department of Agriculture. Users would also agree to submit any additional reports that may be required and to certify such reports for correctness and accuracy. It is estimated that F/H Form D will take less than 20 minutes to complete.

A second new form will be required to be submitted to the Board by handlers for each shipment of substandard filberts/hazelnuts to an approved user. F/H Form D1 will list the quantities of substandard product disposed of or shipped. It is estimated that the form will take less than 5 minutes to complete.

Notice of this action was published in the **Federal Register** on March 21, 1989 (54 FR 11545). Written comments were invited from interested persons until April 20, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the new information collection provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0144.

After consideration of all relevant matter presented, including the Board's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 982.453 is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 982.453 Disposition of substandard filberts-hazelnuts.

The Board shall maintain a list of approved users who are crushers, livestock feed manufacturers, or livestock feeders, and of the locations of the facilities to which substandard filberts/hazelnuts may be shipped. Users interested in purchasing substandard filberts/hazelnuts or filbert/hazelnut waste must make prior application to the Board on F/H Form D to be included on the approved list of such users. Each handler who disposes of substandard filberts/hazelnuts to an approved user shall, upon shipment, report to the Board on F/H Form D1 the quantities disposed of or shipped. Substandard filberts/hazelnuts disposed of to an approved user may only be shipped directly to an approved location where the crushing, feed manufacture, or feeding is to take place. The Board may deny approval to any user application, or may remove any user from the approved list when such denial or removal is deemed necessary to ensure control over disposition of substandard filberts/hazelnuts. This may occur if the Board determines that substandard filberts/hazelnuts are not properly shipped to, or utilized at, approved facilities, in compliance with this requirement. F/H Form D includes the location and description of the disposal facilities to be used as well as a certification to the Board and the Secretary of Agriculture that the applicant will:

(a) Crush, manufacture feed, or feed to livestock such filberts/hazelnuts at the location;

(b) Use such filberts/hazelnuts for no other purpose than for crushing into oil, manufacturing into livestock feed, or livestock feeding;

(c) Permit such inspection of premises and of filberts/hazelnuts received and held, and such examination of books and records covering filbert/hazelnut transactions as the Board may require;

(d) Keep a record of receipts, holdings, and use of substandard filberts/hazelnuts available for examination by authorized representatives of the Board and the U.S. Department of Agriculture for a period of two years after the end of the marketing year in which the recorded transactions are completed; and

(e) Make such reports, certified to the Board and the Secretary of Agriculture as to their correctness, as the Board with the approval of the Secretary may require.

Dated: June 2, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–13464 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 25916; Amdt. No. 1401]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW, Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoke Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure

identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 26, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 24, 1989

Kankakee, IL—Greater Kankakee, VOR RWY 4, Amdt. 5
Kankakee, IL—Greater Kankakee, VOR RWY 22, Amdt. 6
Kankakee, IL—Greater Kankakee, ILS RWY 4, Amdt. 5
Kankakee, IL—Greater Kankakee, RNAV RWY 22, Amdt. 3
Lansing MI—Capital City, VOR RWY 6, Amdt. 23
Lansing MI—Capital City, VOR RWY 24, Amdt. 7
Lansing MI—Capital City, NDB RWY 28L, Amdt. 23
Lansing MI—Capital City, ILS RWY 10R, Amdt. 8
Lansing MI—Capital City, ILS RWY 28L, Amdt. 24
Lansing MI—Capital City, RADAR-1, Amdt. 13

. . . Effective July 27, 1989

Nogales, AZ—Nogales Intl, VOR-A, Amdt. 2
Nogales, AZ—Nogales Intl, VOR/DME-B, Amdt. 2
Nogales, AZ—Nogales Intl, NDB-C, Amdt. 2
Paragould, AR—Kirk Field, VOR RWY 4, Orig.
Paragould, AR—Kirk Field, NDB RWY 4, Amdt. 1
Coeur D'Alene, ID—Coeur D'Alene Air Terminal, VOR RWY 1, Orig.
Tell City, IN—Perry County Muni, VOR RWY 31, Amdt. 3
Tell City, IN—Perry County Muni, NDB RWY 31, Amdt. 6
Bowling Green, KY—Bowling Green-Warren County, VOR/DME RWY 21, Amdt. 4
Hawesville, KY—Hancock Airfield, VOR RWY 15, Amdt. 4
Hawesville, KY—Hancock Airfield, VOR RWY 33, Amdt. 4
Hawesville, KY—Hancock Airfield, NDB-A, Amdt. 4
Owensboro, KY—Owensboro-Daviess County, VOR RWY 17, Amdt. 6
Owensboro, KY—Owensboro-Daviess County, VOR RWY 35, Amdt. 14
Owensboro, KY—Owensboro-Daviess County, NDB RWY 35, Amdt. 6
Owensboro, KY—Owensboro-Daviess County, ILS RWY 35, Amdt. 8
Lovelock, NV—Derby Field, VOR-C, Orig.
Lovelock, NV—Derby Field, VOR/DME-A, Orig.
Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR RWY 19, Amdt. 9
Centerville, TN—Centerville Muni, VOR RWY 2, Amdt. 6
Centerville, TN—Centerville Muni, VOR/DME/RWY 2 Amdt. 1
Evanston, WY—Evanston-Uinta County Burns Field, VOR/DME RWY 23, Amdt. 2

. . . Effective June 29, 1989

Jacksonville, FL—Craig Muni, ILS RWY 32, Orig.
Monroe, NC—Monroe, VOR-A, Amdt. 10

. . . Effective May 22, 1989

Palm Springs, CA—Palm Springs Regional, VOR-B, Amdt. 2

The FAA published an Amendment in Docket No. 25901, Amdt. No. 1400 to Part 97 of the Federal Aviation Regulations (VOL 54 FR No. 99 Page 22416; dated Wednesday, May 24, 1989) under § 97.27 effective June 29, 1989, which is hereby amended as follows:

Bay City, TX—Bay City Muni, NDB RWY 13 Amdt. 2 is hereby rescinded. Amendment 1 remains in effect.

[FR Doc. 89-13456 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 202 and 203

[Release No. 34-26875]

Privacy Act of 1974, Specific Exemptions; Organization, Information and Requests, and Investigations, Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Chairman of the Securities and Exchange Commission has exempted a system of records from certain provisions of the Privacy Act, to the extent that the system contains investigatory material compiled for law enforcement purposes. The system of records is a consolidation of a number of preexisting systems of records, and includes investigatory records for which the exemptions had previously been provided. The specific exemptions that had previously been claimed are preserved by the Chairman's action. Because these exemptions may only be asserted with respect to investigatory material compiled for law enforcement purposes, they are not being extended to public material, including public litigation files, that have been made part of the consolidated system of records.

The Securities and Exchange Commission has also amended certain rules regarding assistance to foreign

governments, to reflect the terminology contained in the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677 ("ITSFEA"). The ITSFEA authorizes increased cooperation with "foreign securities authorities," a term defined therein. These rule amendments will clarify that assistance may be provided to foreign securities authorities under rules that now provide generally for assistance to, or otherwise refer to, foreign governmental authorities.

The Commission has also adopted amendments that delegate authority to the Director of the Division of Enforcement to grant requests made by trustees in bankruptcy for access to enforcement files, and that remove a provision regarding concurrence by the General Counsel in determinations to grant access requests in matters in which the Commission has entered a formal order of investigation.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Senior Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

1. Privacy Act Exemptions.

Notice is hereby given that the Chairman of the Securities and Exchange Commission has exempted a system of records from specified provisions of the Privacy Act of 1974, 5 U.S.C. 552a. The exempted system of records is a consolidation of previously-announced systems of records, maintained by the Division of Enforcement, the Commission's Records Officer, and the Commission's Regional and Branch Offices. The consolidated system contains nonpublic investigatory records, as well as litigation files and other public records.

Section 552a(k)(2) of the Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Act, if the system of records is "investigatory material compiled for law enforcement purposes." These sections of the Act from which exemption may be had generally require the Commission to notify an individual, upon request, of the existence of information contained in a record pertaining to the individual; permit access to such record and permit amendment or correction of such record; make available to an individual any required accounting of disclosures to third-parties; publish the sources of information in the system of records; and screen records to insure that only such information is maintained about the individual as is necessary and relevant to a required purpose of the Commission. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

Rule 312(a) of the Commission's Rules of Information and Requests was previously promulgated to exempt the investigatory records that have been included in the consolidated system of records. Rule 312(a) was based upon a finding that, among other things, disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation or by giving them access to the evidentiary bases for a Commission enforcement action.

In connection with the consolidation of the Commission's enforcement systems of records, the Chairman has amended Rule 312(a) to delete references to the separate systems of records that have been consolidated, and to add a reference to the new system. In addition, Rule 312(a) has been amended to reflect the name change of the Securities Violations Records and Bulletin to its present designation as the Litigation, Actions and Proceedings Bulletin. The amendment of Rule 312(a) preserves the exemptions applicable under the prior version of Rule 312(a) with respect to investigatory materials compiled for law enforcement purposes. The amendment does not extend the exemption to public records, including public litigation files, that have been included in the consolidated system but were not previously in systems of records that were exempted as investigatory materials compiled for law enforcement purposes.

The Chairman of the Securities and Exchange Commission is therefore promulgating the amendments to Rule 312(a) set forth below.

2. "Foreign Securities Authorities"

Notice is further given that the Securities and Exchange Commission has adopted technical rule amendments to Rules 19b and 30-4(a)(7) of the Commission's Rules of Organization (17 CFR 200.19b and 30-4(a)(7)), Rules 80(b) and 402 of the Rules of Information and Requests (17 CFR 200.80(b) and 402), Rule 5 of the Rules of Informal and Other Procedures (17 CFR 202.5), and Rule 2 of the Rules Relating to Investigations (17 CFR 203.2), each of which relates or refers to cooperation by Commission staff with foreign governments.

Rule 19b describes the functional responsibilities of the Director of the Division of Enforcement. Rule 30-4(a)(7) delegates authority to the Director of the Division of Enforcement to grant requests from foreign governmental authorities, among others, for access to materials in the Commission's files concerning nonpublic investigations. Rule 80(b) sets forth the exemptions that may be asserted by the Commission under the Freedom of Information Act ("FOIA"). Rule 402 sets forth the exemptions that may be asserted by the Commission under the Government in the Sunshine Act ("Sunshine Act"). Rule 5 provides an informal description of the Commission's procedures in conducting investigations. Rule 2 permits members of the Commission's staff to engage in discussions with various entities, including representatives of foreign governmental authorities, concerning nonpublic investigations.

The amendments adopted by the Commission with respect to these rules were made as a result of the enactment of the ITSFEA, which, among other things, expands the Commission's authority to undertake investigations at the request of foreign securities authorities. The ITSFEA amends the Securities Exchange Act of 1934 by adding section 3(a)(50) which defines "foreign securities authority" as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters."

The rule amendments update the language of Rules 19b, 30-4(a)(7), 80(b), 402, 5 and 2 by adding the term "foreign securities authority," as defined in new section 3(a)(50), to existing references to foreign governmental authorities. The amendments will thereby clarify that assistance under the rules will be provided to the foreign authorities specified in section 3(a)(50) in addition to other foreign authorities, or will otherwise conform the rules to the new statutory language.

3. Delegation of Authority. The Commission has a statutory advisory role in proceedings under the Bankruptcy Code, *see* 11 U.S.C. 1109(a), and, from time to time, provides assistance to trustees in bankruptcy by granting access to nonpublic information in enforcement files. The Commission has amended Rule 30-4(a)(7), the

Commission's rule delegating authority to the Director of the Division of Enforcement, to delegate authority to the staff to grant such requests from trustees in bankruptcy. The Commission has also amended Rules 19b and 2 to reflect this delegation.

In light of its experience in responding to access requests, the Commission has further amended Rule 30-4(a)(7) to remove the provision regarding concurrence by the General Counsel in determinations to grant access requests in matters in which the Commission has entered a formal order of investigation. The Commission has also amended Rules 19b and 21 (17 CFR 200.21) to reflect the removal of the concurrence requirement.

The Commission has determined that the rule amendments relate solely to agency organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunities for public participation, 5 U.S.C. 553, are not applicable. Similarly, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which apply only when notice and comment rulemaking are required by the APA or other law, are not applicable. The Commission finds that the rule amendments will not impose any burden on competition. The Commission further finds, because of the technical nature of the amendments, that the APA requirement with respect to delay in the effective date of substantive rules, 5 U.S.C. 553(d), is also inapplicable to the amendments.

List of Subjects

17 CFR Part 200

Organization; conduct and ethics; and information and requests

17 CFR Part 202

Informal and other procedures

17 CFR Part 203

Rules relating to investigations.

For the reasons set out in the preamble, Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A, is amended by adding the following citations, and the authority citations following §§ 200.21 and 200.30-4 are removed:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d-1, 78d-2, 78w, 79t, 77sss, 80a-37, 80b-11), unless otherwise noted.

Section 200.21 is also issued under 15 U.S.C. 77t, 78u, 79r, 77uuu, 80a-41, 80b-9; 11 U.S.C. 901, 1109(a); and (5 U.S.C. 552a(d)(2)(B)(ii)).

Section 200.30-4 is also issued under 15 U.S.C. 77t, 78u, 79r, 77uuu, 80a-41, 80b-9.

* * * * *

2. Section 200.19b is revised to read as follows:

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for the supervision and conduct of all of the enforcement activities under each of the acts administered by the Commission and the investigations relating thereto. The Director is responsible also for recommending the institution of administrative and injunctive actions arising out of such investigations and enforcement activities and for the determination of whether the available evidence supports the allegations in the proposed complaint. In addition, the Director is responsible, in collaboration with the General Counsel, for the review of cases to be referred to the Department of Justice with a recommendation for criminal prosecution. The Director is responsible for granting or denying requests by domestic and foreign governmental authorities, foreign securities authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, and trustees in bankruptcy, for access to materials in the Commission's enforcement files and, in collaboration with other involved Commission offices and divisions, regulatory files.

§ 200.21 [Amended]

3. Section 200.21(a) is amended by removing the fourth sentence.

4. Section 200.30-4 is amended by revising the first clause of the introductory paragraph, and paragraph (a)(7) to read as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

Pursuant to the provisions of Pub. L. No. 100-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), * * *

(a)(1) * * *

(7) To grant requests for access to, or copies of, materials in the Commission's enforcement and regulatory files upon written request for such access submitted by domestic and foreign governmental authorities, foreign securities authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, and trustees in bankruptcy; *Provided* That requests for access to, or copies of, materials in the Commission's regulatory files shall be granted only with the concurrence of the head of the Commission division or office responsible for such files or his or her delegate.

* * * * *

Subpart D—Information and Requests

5. The authority citation for Part 200, Subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 85, 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F)(3), 78w, 79t, 79v(a), 77sss, 80a-37, 80a-44(c), 80a-44(b), 80b-10(a), 80b-11.

Section 200.80 is also issued under 5 U.S.C. 552b; Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2; Pub. L. 93-502; Pub. L. 93-579; 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84-29 (June 4, 1975) and by secs. 11A, 15, 19 and 23 of Pub. L. 98-38 (June 6, 1983) (15 U.S.C. 78k-1, 78o, 78s and 78w); 11 U.S.C. 901, 1109(a).

6. Section 200.80 is amended by revising paragraphs (b)(7)(i) introductory text, (b)(7)(i)(A), (b)(7)(ii), and (b)(8) to read as follows:

§ 200.80 Commission records and information.

* * * * *

(b) * * *

(7)(i) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(A) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or the Department of Justice, or any United States Attorney, or any Federal, state, local, foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

* * * * *

(ii) The term "investigatory records" includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any

examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, state, local, or foreign governmental authority or foreign securities authority, by any professional association, or by any securities industry self-regulatory organization. The term "investigatory records" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Contained in, or related to, any examination operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other Federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

* * * * *

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

7. The authority citation for Part 200, Subpart H, continues to read as follows:

Authority: Pub. L. 93–579, sec. (f), 5 U.S.C. 552a(f), unless otherwise noted.

Section 200.312 is also issued under Pub. L. 93–579, sec. k, 5 U.S.C. 552a(k).

8. Section 200.312 is amended by revising paragraph (a) introductory text and (a)(1)–(8), and by removing (a)(9)–(29), to read as follows:

§ 200.312 Specific exemptions.

* * * * *

(a) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the following systems of records maintained by the Commission shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as they contain investigatory materials compiled for law enforcement purposes:

(1) Enforcement Files;

(2) Litigation, Actions and Proceedings Bulletin;

(3) Office of the General Counsel Working Files;

(4) Office of the Chief Accountant Working Files;

(5) Complaint processing System;

(6) Investor Service Complaint Index;

(7) Name-Relationship Index System; and

(8) Rule 2(e) of the Commission's Rules of Practice—Appearing or Practicing Before the Commission.

* * * * *

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

9. The authority citation for Part 200, Subpart I, continues to read as follows, and the authority citation following section 200.402 is removed:

Authority: 5 U.S.C. 552b, unless otherwise noted.

10. Section 200.402 is amended by revising paragraphs (a)(5)(iv), (a)(7)(i)(A), (a)(7)(ii), (a)(8), and (a)(9)(ii) to read as follows:

§ 200.402 Closed meetings.

(a) * * *

(5) * * *

(iv) Transmit, or disclose, with or without recommendation, any Commission memorandum, file, document, or record to the Department of Justice, a United States Attorney, any federal, state, local, or foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization, in order that the recipient may consider the institution of proceedings against any person or the taking of any action that might involve accusing any person of a crime or formally censuring any person; or

* * * * *

(7)(i) * * *

(A) Interfere with enforcement activities undertaken, or likely to be undertaken, by the Commission or the Department of Justice, or any United States Attorney, or any Federal, State, local, or foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

* * * * *

(ii) The term "investigatory records" includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, State, local, or foreign governmental authority or foreign securities authority, by any professional association, or by any securities industry self-regulatory organization. The term "investigatory records" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Disclose information contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

(9) * * *

(ii) Significantly frustrate the implementation, or the proposed implementation, of any action by the Commission, any other federal, state, local or foreign governmental authority, any foreign securities authority, or any securities industry self-regulatory organization: *Provided, however,* That this paragraph (a)(9)(ii) shall not apply in any instance where the Commission has already disclosed to the public the precise content or nature of its proposed action, or where the Commission is expressly required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal.

* * * * *

PART 202—INFORMAL AND OTHER PROCEDURES

11. The authority citation for Part 202 is amended by adding the following citation, and the authority citation following § 202.5 is removed:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 202.5 is also issued under sec. 20, 48 Stat. 86, sec. 21, 48 Stat. 899, sec. 18, 49 Stat. 831, sec. 321, 53 Stat. 1174, sec. 1, 76 Stat. 394, 15 U.S.C. 77t, 78u, 79r, 77uuu, 80a–41, 80b–9, 78d–1.

12. Section 202.5 is amended by revising paragraph (b) to read as follows:

§ 202.5 Enforcement activities.

* * * * *

(b) After investigation or otherwise the Commission may in its discretion take one or more of the following actions: Institution of administrative proceedings looking to the imposition of remedial sanctions, initiation of

injunctive proceedings in the courts, and, in the case of a willful violation, reference of the matter to the Department of Justice for criminal prosecution. The Commission may also, on some occasions, refer the matter to, or grant requests for access to its files made by, domestic and foreign governmental authorities or foreign securities authorities, self-regulatory organizations such as stock exchanges or the National Association of Securities Dealers, Inc., and other persons or entities.

* * * * *

PART 203—RULES RELATING TO INVESTIGATIONS

13. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 as amended; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Subpart A—In General

14. Section 203.2 is revised to read as follows:

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Division of Enforcement at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Administrator or higher, may engage in, and may authorize members of the Commission's staff to engage in, discussions with representatives of domestic and foreign governmental authorities, foreign securities authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, and trustees in bankruptcy, concerning information obtained in individual investigations, including examinations and formal investigations conducted pursuant to Commission order.

By the Commission.

Date: May 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13516 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1902, 1903, 1908, 1910, 1915, 1917, 1918, and 1926

Display or Removal of Management and Budget Control Numbers Assigned to Collections of Information Contained in Regulations; Technical Amendments to CFR

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Technical Amendments to CFR.

SUMMARY: This document amends certain OSHA regulations to include or remove a control number assigned by the Director of the Office of Management and Budget (OMB). The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq. and 5 CFR Part 1320) requires display of an OMB control number on all information collection provisions.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq. and 5 CFR Part 1320) requires the display of an OMB control number for all regulations containing information collection requirements. In certain instances, the Department inadvertently did not include the OMB number at the end of the appropriate section of the regulatory text. In addition, the agency has found numbers incorrectly displayed; typographical errors; and OMB numbers displayed in sections where the information collection requirements were removed. The Agency, therefore, is making technical amendments to the regulations cited, adding parenthetically the OMB approval numbers; removing numbers where information collection is no longer required; and correcting the typographical error.

Since these are minor technical amendments to the regulations, OSHA finds good cause, under 5 U.S.C. 553 and 29 CFR 1911.5, for not providing notice and public procedure and delayed effective dates for these amendments.

Parts 1902, 1903, 1908, 1910, 1915, 1917, 1918 and 1926 of Title 29 of the Code of Federal Regulations are amended as set forth below:

PARTS 1902, 1903, 1908, 1910, 1915, 1917, 1918, and 1926—[AMENDED]

§ 1902.3 [Amended]

1. In § 1902.3, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0004)

§ 1903.11 [Amended]

2. In § 1903.11, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0064)

§ 1908.6, 1908.7, 1908.9 and 1908.10 [Amended]

3. In §§ 1908.6, 1908.7, 1908.9, and 1908.10, by adding a parenthetical, as follows, at the end of the regulatory text of each section:

(Approved by the Office of Management and Budget under control number 1218-0110)

§ 1910.7 [Amended]

4. In § 1910.7, the parenthetical displaying the OMB control number at the end of Appendix A is transferred to the end of the regulatory text preceding the appendix.

§ 1910.20 [Amended]

5. In § 1910.20, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0065)

§ 1910.66 [Amended]

6. In § 1910.66, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0121)

§ 1910.95 [Amended]

7. In § 1910.95, the parenthetical displaying the OMB control number at the end of Appendix I is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.217 [Amended]

8. In § 1910.217, by revising the parenthetical at the end of the regulatory text to read as follows:

(The information collection requirements contained in paragraph (g) were approved by the Office of Management and Budget under control number 1218-0070. The information collection requirements contained in paragraph (h) were approved by the Office of Management and Budget under control number 1218-0143)

9. In § 1910.272, the parenthetical displaying the OMB control number at the end of Appendix C is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.421 [Amended]

10. In § 1910.421, by revising the parenthetical at the end of the regulatory text to read as follows:

(Approved by the Office of Management and Budget under control number 1218–0069)

§ 1910.1001 [Amended]

11. In § 1910.1001, the parenthetical displaying the OMB control number at the end of Appendix H is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1015 [Amended]

12. In § 1910.1015, by revising the parenthetical at the end of the regulatory text to read as follows:

(Approved by the Office of Management and Budget under control number 1218–0044)

§ 1910.1017 [Amended]

13. In § 1910.1017, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218–0010)

§ 1910.1018 [Amended]

14. In § 1910.1018, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218–0104)

§ 1910.1025 [Amended]

15. In § 1910.1025, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1028 [Amended]

16. In § 1910.1028, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218–0129)

§ 1910.1029 [Amended]

17. In § 1910.1029, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218–0128)

§ 1910.1043 [Amended]

18. In § 1910.1043, the parenthetical at the end of Appendix E is removed and a new parenthetical is added at the end of the regulatory text immediately preceding Appendix A to read as follows:

(Approved by the Office of Management and Budget under control 1218–0061)

§ 1910.1044 [Amended]

19. In § 1910.1044, the parenthetical displaying the OMB control number at the end of Appendix C is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1045 [Amended]

20. In § 1910.1045, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218–0126)

§ 1910.1047 [Amended]

21. In § 1910.1047, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1048 [Amended]

22. In § 1910.1048, the parenthetical at the end of Appendix E is removed and a new parenthetical is added at the end of the regulatory text immediately preceding Appendix A to read as follows:

(Approved by the Office of Management and Budget under control number 1218–0145)

§ 1910.1101 [Amended]

23. In § 1910.1101, the parenthetical at the end of the regulatory text is amended by removing control number "1218–0010" and inserting control number "1218–0133".

§ 1910.1200 [Amended]

24. In § 1910.1200, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

§§ 1910.68, 1910.252, and 1910.268 [Amended]

25. In §§ 1910.68, 1910.252, and 1910.268, the parenthetical displaying OMB control numbers at the end of the regulatory text are removed.

§ 1915.7 [Amended]

26. In § 1915.7, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218–0011)

§ 1915.95 [Amended]

27. In § 1915.95, the parenthetical at the end of the regulatory text is removed.

§ 1926.250 [Amended]

28. In § 1926.250, the parenthetical at the end of the regulatory text is amended by correcting OMB control number "1218–0003" to read "1218–0093".

§ 1926.404 [Amended]

29. In § 1926.404 the parenthetical at the end of the regulatory text is revised to read as follows:

(Approved by the Office of Management and Budget under control number 1218–0130)

§ 1926.550 [Amended]

30. In § 1926.550 the parenthetical at the end of the regulatory text is revised to read as follows:

(The information collection requirements contained in paragraph (a)(1) are approved by the Office of Management and Budget under control number 1218–0115. The information collection requirements contained in paragraph (a)(6) are approved by the Office of Management and Budget under control number 1218–0113. The information collection requirements contained in paragraph (a)(11) are approved by the Office of Management and Budget under control number 1218–0054.)

31. In §§ 1915.99, 1917.28, 1918.90, and 1926.59, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

Signed at Washington, DC, this 26th day of May 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89–13460 Filed 6–5–89; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3551–2]

Approval and Promulgation of State Implementation Plans for Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Stack Height Analyses and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is today approving (1) the stack height regulations for Utah, Montana and Colorado, (2) two stack height definitions for South Dakota, (3) the stack height demonstration analyses for North Dakota, South Dakota, and Wyoming, and (4) the stack height demonstartion analyses for Montana and Utah with the exceptions noted below. Each State was required to review its State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations (July 8, 1985, 50 FR 27892). The intended effect of this action is to formally document that these States have satisfied their obligations under Section 406 of the Clean Air Act (CAA) to review their SIPs with respect to EPA's revised stack height regulations.

The July 8, 1985, stack height regulations were challenged by the Natural Resource Defense Council (NRDC) and resulted in the remand of three provisions of the regulations to EPA for reconsideration. The remand is not believed to significantly affect the Utah, Montana, Colorado and South Dakota stack height regulations submittals. EPA's approval of the stack height regulations is given with the understanding that should EPA promulgate revisions to the stack height regulations as a result of the remand, the States will and have agreed to modify their regulations accordingly.

Today's action does not include the ASARCO stack analyses which were submitted as part of the Montana SIP revision. EPA had proposed approval of the ASARCO stacks in 53 PR 3052 (February 3, 1988). Because of procedural concerns relating to discussion of the stacks analyses in the February 3 proposal, EPA is not acting on the ASARCO stacks in this notice. The ASARCO stacks analyses will be reproposed to correct these procedural issues. In addition, the ASARCO facility is being evaluated because of a recent Lead SIP Call on October 1, 1988 (see 53 FR 48642, December 2, 1988). The Lead SIP also must address the stack height issue for the affected emissions. EPA will coordinate with the State to complete the stack height analyses required by the July 8, 1985, promulgation concurrently with Lead SIP (i.e., the Lead SIP submitted by the State in response to the October 1, 1988, Lead SIP Call).

Today's action, also, does not include the Kennecott stack height analyses which were submitted as part of the Utah SIP revision. EPA has addressed that part of the Utah stack height SIP, analyses of the Kennecott stack, in a separate action at 53 FR 48942 (December 5, 1988).

Wyoming originally submitted a commitment to insure consistency with the federal stack height regulations through its new sources review process until its stack height rules were finalized. Such regulations have since been submitted; EPA is acting on them in a separate rulemaking. North Dakota originally submitted a commitment to comply with the Federal regulations until the State adopted the required regulations. North Dakota has since submitted the regulations; EPA has addressed them in a separate rulemaking at 53 FR 45763 (November 14, 1988).

EPA received the Colorado stack height demonstration analyses much latter than the above mentioned States. EPA has addressed the Colorado demonstration analyses in a separate action at 53 FR 47730 (November 25, 1988).

EPA proposed to approve this action in 53 FR 3052 (February 3, 1988). No comments were received.

EFFECTIVE DATES: The rule will become effective on July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293–1814, FTS 564–1814.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, revising certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all States were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. ALL SIP revisions and revised emission limits were to be submitted to EPA within 9 months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, States were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Subsequent to the July 8, 1985 promulgation, the stack height regulations were again challenged in *NRDC v. Thomas*, 838, F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations for the most part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and

3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 CFR 51.100(ii)(2)].

State Submissions

A. Demonstration Analyses

EPA has received stack height reviews from Montana, North Dakota, South Dakota, Utah and Wyoming. The Montana review was submitted with a letter dated November 25, 1985, and a subsequent submittal dated January 28, 1986; the North Dakota review with a letter dated April 18, 1986, and subsequent submittal dated July 21, 1987; the South Dakota review with a letter dated August 20, 1986, and subsequent submittal dated December 3, 1986; the Utah review with a letter dated May 2, 1986; and the Wyoming review with a letter dated August 5, 1986. Each State has found that no existing emissions limitations have been affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that the States' inventories above *de minimis* height and *de minimis* emission level are complete. EPA has carefully reviewed the States' findings that no emission limits have been affected by prohibited dispersion techniques. EPA concurs in those findings, except with regard to the ASARCO stacks in Montana and the Kennecott stack in Utah. EPA has not completed its evaluation of the ASARCO stacks, which will thus be addressed in a separate action. EPA is not evaluating the Kennecott stack in this **Federal Register** action. The Kennecott stacks have been addressed in a separate action at 53 FR 48942 (December 5, 1988). Summaries of the States' findings are presented in the tables below. Detailed documentation of the States' findings and of EPA's review is contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

With this notice, the actual height of those stacks whose GEP height was calculated to be greater than the actual height will now become the GEP height. The GEP height of those stacks whose GEP height was calculated to be less than the actual height and whose emissions were determined or modeling conducted at the lower height will remain the GEP height.

A summary of each State's findings is provided below.

Wyoming

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2,[1,4] (t/yr)
Basin Electric (Laramie River)	Unit 1	182.9	H+1.5L [5]	193.5	5000+
	Unit 2	182.9	H+1.5L [5]	193.5	
	Unit 3	182.9	H+1.5L	193.5	
Pacific Power & Light					
(Jim Bridger Power Plant)	Unit 1	152.7	H+1.5L [5]	199.0	5000+
	Unit 2	152.7	H+1.5L [5]	199.0	
	Unit 3	152.7	H+1.5L [5]	199.0	
	Unit 4	152.7	H+1.5L [5]	199.0	
(Dave Johnson Power Plt.)	Unit 1	151.1	H+1.5L [5]	160.3	5000+
	Unit 2	151.1	H+1.5L [5]	160.3	
	Unit 3	151.1	H+1.5L [5]	160.3	
	Unit 4	76.3	H+1.5L [5]	160.3	
(Wyodak Power Plant)	Unit 1	122.3	H+1.5L [5]	143.7	5000+
Utah Power & Light (Naughton)	Unit 2	68.21	Grandfathered [2] (1968) [2]		[3] 5000+
	Unit 3	143.29	H+1.5L	144.8	
Black Hills P&L (Neil Simpson)	Unit 5	76.2	H+1.5L [5]	92.96	
FMC Wyoming (Green River)	NS-1-A	91.4	H+1.5L [5]	119.75	5000+
	NS-1-B	91.4	H+1.5L [5]	119.75	
Wyoming Refinery	TCC Unit	69.2	H+1.5L [5]	69.77	

[1] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

[2] Documentation provided. Grandfathered means stack in existence in given year.

[3] State monitors emissions annually by emission inventory updates and/or inspections. Facility is reviewed on its sulfur in coal content, operating rates and on the SO_2 CEM monitor on the unit stacks (unit stack #3).

[4] EPA guidance was provided to the State in November 1985 on stack evaluation. Because of various conversations between the Region VIII office and the State, Region VIII is confident that the stacks were evaluated for dispersion techniques. Dispersion techniques as defined in 40 CFR 51.100(hh) were not applicable to these sources.

[5] In this analysis, the State used the H+1.5L formula but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H) the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G.T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

North Dakota

Plant name	Stack I.D.	Actual stack height(M)	Applicable GEP formula	GEP height (M)	SO_2[4] (t/yr)
Amoco Oil Refinery		60.7	*de minimis*		5583
ANG Coal Gasification Co.		125.2	H+1.5L	127.2	9948
Basin Electric Power Corp.:					
AVS	1	182.9	H+1.5L	189	5615
AVS	2	182.9	H+1.5L	189	
AVS	3	182.9	H+1.5L	210.2	
L. Olds	1	106.7	H+1.5L [5]	191	8718
L. Olds	2	152.4	H+1.5L [5]	191	18110
KOCH Hydrocarbon		65.5	([1])	65.5	1298
Minnkota Power Coop.: M.R. Young	1	91	2.5H [2]	199	12353
Square Butte Elec. Power Corp.; M.R. Young	2	168	2.5H [2]	199	13206
Montana Dakota Utilities:					
Coyote [1]	1	151.8	2.5H [2]	221	15780

Plant name	Stack I.D.	Actual stack height(M)	Applicable GEP formula	GEP height (M)	SO_2[4] (t/yr)
Heskett	1	91.5	H+1.5L [5]	97.5	4635
	2	91.5	H+1.5L [5]	94	4414
Nokota Company		152.4	H+1.5L	152.4	
United Power Association [3]	1 & 10	78	H+1.5L	111.3	11121
UPA/CPA:					
Coal Creek	1	201	2.5H [2]	222	20196
Coal Creek	2	201	2.5H [2]	222	21322

[1] A stack height of 65m is used in all dispersion modeling scenarios conducted by the company and the State.
[2] Documentation provided to show reliance.
[3] This is a merged stack. The merging did not result in any increase in the allowable emissions and was associated with the installation of a new boiler (Unit 10) meeting NSPS.
[4] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).
[5] In this analysis, the State used the H+1.5L formula, but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H), the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G.T. Helms to Air Branch Chiefs, showing reliance on the 2.5H can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H formula. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

Utah

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[3] (t/yr)
Deseret	Unit 1	182.9	H+1.5L	[1] 177.9	
	Unit 2 [5]	182.9	H+1.5L	[1] 177.9	
U.P.&L Hunter	Unit 1	183.08	2.5H [7]	185.05	
	Unit 2	183.08	2.5H [7]	185.05	
	Unit 3	183.1	H+1.5L	185.0	
U.P.&L Huntington	Unit 1	182.93	2.5H [7]	[1] 176.83	9448
	Unit 2	182.93	2.5H [7]	[1] 176.83	
I.P.P.	Unit 1	216.46	H+1.5L	230.2	[8] 10975
	Unit 2	216.46	H+1.5L	230.2	—
U.S. Steel Blast Furnace	Unit 1	79.2	Grandfathered [2] (1946) [2]		
	Unit 2	79.2	Grandfathered [2] (1946) [2]		
	Unit 3	68.6	Grandfathered [2] (1946) [2]		
U.S. Steel Coke Combustion	Unit 1	76.2	Grandfathered [2] (1946) [2]		
	Unit 2	76.2	Grandfathered [2] (1946) [2]		
	Unit 3	76.2	Grandfathered [2] (1946) [2]		
	Unit 4	76.2	Grandfathered [2] (1946) [2]		
Chevron USA	HCC Cracker	88.4	Grandfathered [2] (1946) [2]		6085
Chevron Research	Cat. Dis. Air Heater	69.8	(6)	(6)	
Chevron Research	Retort	69.8	(6)	(6)	
AMAX	Melt Reactor	76.22	2.5H [7]	86.13	
	Electroytics	76.22	2.5H [7]	86.13	
	Emerg. Off Gas	76.22	2.5H [7]	86.13	
	Spray Dryer 1	76.22	2.5H [7]	86.13	
	Spray Dryer 2	76.22	2.5H [7]	86.13	
	Spray Dryer 3	76.22	2.5H [7]	86.13	
Phillips Petro 5733	Thermal Cat. Cracking.	80.8	Grandfathered [2] (1952) [2]		
White River (Phase I)	3 Boilers	76.2	H+1.5L	76.2	
White River (Phase II)	1 Boiler	76.2	H+1.5L	76.2	
	2 Retort	76.2	H+1.5L	111.28	
White River (Phase III)	2 Elutriators	76.2	H+1.5L	92.98	
	2 Shale Lifts	76.2	H+1.5L	92.98	
	1 Hydrogen Plant	76.2	H+1.5L	76.2	
	3 Power Plants	76.2	H+1.5L	76.2	
	2 Ball Heaters	76.2	H+1.5L	92.98	
Tosco	Preheat [5]	(4)	H+1.5L	(4)	
	Elutriators [5]	(4)	H+1.5L	(4)	
	Proc. Shale Wetters [5]	(4)	H+1.5L	(4)	
U.P.&L Gadsby	Unit 1	76.2	Grandfathered [2] (1951) [2]		
	Unit 2	76.2	Grandfathered [2] (1952) [2]		
	Unit 3	76.2	Grandfathered [2] (1955) [2]		

[1] Source modeled; no significant difference in emission limitations found.

[2] Documentation provided. Grandfathered means stack in existence in year given.
[3] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)–(iii) and prohibited by 40 CFR 50.118(a).
[4] Feasibility approval issued Dec. 28, 1983; construction still has not started; PSD permit has not been issued; EPA has advised the State that it is not approving a GEP height on these proposed stacks until a permit is issued and in compliance with the GEP regulation requirements. The State in a SIP revision, gives an actual and GEP height for these stacks. However, the State has committed to review plans for emission limitations based on PSD & stack height requirements.
[5] Proposed stacks.
[6] Permit expired; source shut down.
[7] In the proposal of this action, the applicable GEP formula for these stacks was shown to be H+1.5L. However, in light of the remand, EPA reviewed these stacks and found that they were constructed prior to January 12, 1979, and hence should apply the 2.5H formula. EPA confirmed in a telephone conversation with the State on 6/22/88, that it did have dated and certified blueprints that showed the "H" of the nearby structure in all cases. EPA believes that these documents are sufficient enough to show reliance on the 2.5H formula.
[8] In the proposal of this action, EPA indicated that the SO_2 emissions were 17,870 tons/year. Upon further review, EPA has found that the allowable SO_2 emissions are 10,975 tons/year.

Montana

Plant name	Stack I.D.	Actual stack height	Applicable GEP (M) formula	GEP height (M)	SO[3] (t/yr)
Conoco (Billings)	Boiler	82	H+1.5L	75.7 [1]	
Montana-Dakota (Sidney)	Coal Boiler	76	H+1.5L [5]	95.3	
Montana Power (Billings)	Coal Boiler	107	Grandfathered [2]	(1968) [2]	[4] 5000+
Montana Power (Colstrip):					
Coal Boiler 1		152.4	H+1.5L[5]	164.6	
Coal Boiler 2		152.4	H+1.5L[5]	164.6	
Coal Boiler 3		211	H+1.5L	212.6	
Coal Boiler 4		211	H+1.5L	212.6	
Exxon (Billings)					[4] 5000+
Cenex (Laurel)					[4] 5000+

[1] Modeling confirmed no violations of federal ambient SO_2 standard.
[2] Documentation provided. Grandfathered means stack in existence in given year.
[3] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)–(iii) and prohibited by 40 CFR 50.118(a).
[4] Montana Power (Billings), Exxon (Billings) and Cenex (Laurel). Emissions controlled by stipulations which are part of the SO_2 SIP for the Laurel nonattainment area; proposal 5/9/79 (44 FR 27187), final 1/10/80 (45 FR 2034).
[5] In this analysis, the State used the H+1.5L formula, but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H), the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G.T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

South Dakota

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[1] (t/yr)
Big Stone Power Plant		152	H+1.5L[2]	161.15	

[1] The State has determined that the listed facility below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)–(iii) and prohibited by 40 CFR 50.118(a).
[2] In this analysis, the State used the H + 1.5L formula, but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H + 1.5L or 2.5H), the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G. T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

B. Stack Height Regulation

EPA has received stack height regulation revisions from Utah, Montana and Colorado and the stack height definitions for good engineering practice and dispersion technique from South Dakota. Also, EPA received commitments to comply with the federal stack height regulations from North Dakota and Wyoming. The rules from Colorado, Utah and Montana, the definitions from South Dakota and the commitments from Wyoming and North Dakota apply to all new sources and modifications as required in 40 CFR 51.164 (old citation 51.18(1)), as well as existing sources as required in 40 CFR 51.118 (old citation 51.12 (j), (k), (l)). This means that these rules and commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA has reviewed the above mentioned revisions and has determined that they are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. (Reference to the old citation is made because on November 7, 1986, 51 FR 40656, EPA restructured 40 CFR Part 51. The regulations themselves have not changed; the numbering sequence has changed.) Although the EPA generally approves Utah, Montana and Colordo's stack height rules and South Dakota's definitions on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D. C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify Utah, Montana, Colorado, and South Dakota that their rules must be changed to comport with the EPA's modified requirements. Although this potential regulation revision is not expected to result in revised emission limitations or other actions taken by Utah, Montana, Colorado, and South Dakota, EPA has obtained commitments from Utah, Montana, Colorado and South Dakota to change their regulations accordingly. EPA takes these commitments to mean that such States will proceed to process all regulatory changes, including those affecting new source programs, to comport with such

new requirements. Discussion on these States' submittals as well as the status of the North Dakota and Wyoming regulations are given below.

Colorado

In a letter dated May 8, 1986, Governor Richard Lamm submitted revisions to Colorado Regulation No. 3 (Regulation Requiring an Air Contaminant Emission Notice, Emission Permit Fees) of the Colorado SIP modifying stack height evaluations. The changes consisted of (1) new definitions of dispersion techniques, good engineering practice, nearby and excessive concentrations (Section XII. D.) and (2) rules clarifying technical modeling and monitoring requirements (Section XII. C.). These revised rules bring the Colorado regulations into conformity with regulations promulgated by the EPA.

In a letter dated May 9, 1988, Bradley J. Beckham, Director, Air Pollution Control Division, committed to revise Colorado's stack height regulations should the remand affect the July 8, 1985, federal stack height requirements. EPA interprets this to mean that Colorado will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

Montana

In a letter dated May 28, 1986, Governor Ted Schwinden, submitted modifications to the Montana SIP which revised rules governing stack height and dispersion techniques. The modifications repeal Administrative Rules of Montana (ARM) 16.8.1201, 16.8.1202 and 16.8.1203 in Sub-Chapter 12 and adds ARM 16.8.1204 (Definition), 16.8.1205 (Requirements), and 16.8.1206 (Exemptions).

Montana regulations do not specifically define "emission limitation and emission standards." However, the regulation, ARM 16.8.1205, subjects the source(s) to all emission limitation requirements in the Montana Clean Air Act. Montana regulations do not specifically define "stack in existence"; however, Montana implies its use in its definition of GEP and in its stack height requirements (ARM 16.8.1205) and exemptions (16.8.1206).

The Montana regulations are designed to limit the use of tall stacks. Further, the State underscores the change in its regulations as reflecting the policy of the State to achieve acceptable levels of ambient air quality through the use of continuous emission reduction and not through the use of dispersion techniques or tall stacks.

In a letter dated May 6, 1988, Jeffrey T. Chaffee, Chief, Air Quality Bureau, committed to revise Montana's stack height regulation should the remand affect the July 8, 1985, federal stack height requirements. EPA interprets this to mean that Montana will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

Utah

The Utah SIP revision to comply with the stack height requirement was submitted with a letter dated May 2, 1986, by Governor Norman H. Bangerter. The submittal includes regulations to address (1) GEP Stack height/dispersion techniques (2) a new Section 17 of the SIP that lists all existing stacks in Utah greater than 65 meters and (3) a technical support document for Section 17 of the SIP.

New definitions are added to Part I of the Utah Air Conservation Regulations (UACR). Such regulations have since been recodified. EPA will address the recodified regulations in a separate rulemaking. They are dispersion techniques, UACR 1.1.128 (recodified UACR 1.49); excessive concentration, UACR 1.1.129 (recodified UACR 1.55); good engineering practice, UACR 1.1.130 (recodified UACR 1.71); nearby UACR 1.1.131 (recodified UACR 1.98); stack, UACR 1.1.132 (recodified 1.136); and stack in existence, UACR 1.1.133 (recodified UACR 1.137). Part III of the UACR (UACR 3.8), which defines the stack height exemptions and requirement for source owners or operators, was also revised to be more consistent with federal regulations.

In a letter dated May 27, 1988, F. Burnell Cordner, Director, Bureau of Air Quality, committed to revise Utah's stack height regulations should the remand affect the July 8, 1985, federal stack height requirements. EPA interprets this to mean that Utah will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

South Dakota

In a letter dated August 7, 1986, Governor William Janklow submitted revisions to the South Dakota SIP adopting federal stack height regulations. South Dakota has incorporated by reference EPA definitions for good engineering practices [40 CFR 51.1(ii)] and dispersion techniques [40 CFR 51.1(hh)], which were promulgated on July 8, 1985, into the Administrative Rules of South Dakota (ARSD) 74:26:01:12. This is to ensure that new sources comply with emission limitations and other requirements of the CAA. (Note: As stated above, EPA restructured 40 CFR Part 51 on November 7, 1986 (51 FR 40656). The citation in ARSD 74:26:01:12 referenced regulations 40 CFR 51.1 (ii) and (hh) which are 40 CFR 51.100(ii) and 51.100(hh) in the new federal citation. The South Dakota regulation and the federal regulations are one and the same.)

In a letter dated January 30, 1987, Joel Smith, South Dakota Administrator for Air Quality and Solid Waste, committed to adopting the definitions "nearby" and "excessive concentration" (51.100 (jj) and (kk), new citation) with the next regulatory update (mid 1987). In August 1987, EPA received draft regulations from South Dakota which incorporated by reference in ARSD 74:26:01:12 the remainder of the stack height regulations (40 CFR 51.100 (z), (ff), (gg), (jj), (kk), and (nn)). South Dakota submitted such regulations on January 28, 1988. EPA has made a determination that the added stack height regulations in ARSD 74:26:01:12 are consistent with the federal stack height requirements and has addressed them in a separate rulemaking at 53 FR 34077 (September 2, 1988).

In a letter dated May 11, 1988, Joel C. Smith, Administrator, Office of Air Quality and Solid Waste, committed to revise South Dakota's stack height regulations should the remand affect the July 8, 1985, federal stack height requirements. In a separate rulemaking, EPA added this letter to 40 CFR 52.2180. EPA interprets this commitment to mean that South Dakota will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

For new or modifying sources, the new source review lies with the State and the prevention of significant deterioration review lies with EPA (this programs has not been delegated to the State).

Thus, EPA believes that requirements for any source in 40 CFR 51.118 are satisfied.

North Dakota and Wyoming

The State of North Dakota submitted a letter of commitment to comply with the federal stack height regulations until it adopted the required regulations. The North Dakota letter, dated April 18, 1986, was submitted by Mr. Dana Mount, Division Director of Environmental Engineering, North Dakota Health Department. The State of Wyoming submitted a letter of commitment insuring consistency with the federal stack height regulations

through its new source review process until its stack height rules were finalized. The Wyoming letter dated December 4, 1986, was submitted by Mr. Charles Collins, Administrator, Wyoming Air Quality Division. North Dakota has since submitted such regulations to EPA with a letter dated January 26, 1988. EPA has made a determination that the North Dakota stack height regulations are consistent with the federal stack height requirements and has addressed them in a separate direct final action at 53 FR 45763 (November 14, 1988). Wyoming has since submitted such rules to EPA with a letter dated September 6, 1988. EPA will be acting on them in a separate rulemaking action.

Final Action

EPA believes that the stack height regulations submitted by Utah, Montana and Colorado and the two definitions submitted by South Dakota are consistent with the revised federal regulations. Although EPA is approving the Utah, Montana and Colorado stack height rules and the two stack height definitions for South Dakota on the grounds that they satisfy 40 CFR Part 51, EPA provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify Utah, Montana, Colorado and South Dakota that their rules must be changed to comport with the EPA's modified requirements. Although this potential regulation revision is not expected to result in revised emission limitations or other actions taken by Utah, Montana, Colorado and South Dakota, EPA has obtained commitments from Utah, Montana, Colorado and South Dakota to change their regulations accordingly. EPA takes these commitments to mean that such states will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

Wyoming originally committed to insure consistency with federal regulations, until adequate state regulations were adopted. Wyoming has since submitted such regulations; EPA is acting on them in a separate rulemaking. North Dakota originally submitted a commitment to comply with the Federal regulations until the State adopted the required regulations. North Dakota has since submitted such regulations; EPA has addressed them in a separate rulemaking action at 53 FR 45763 (November 14, 1988).

The stack height GEP analyses submitted by Utah (with the Kennecott exception), Montana (with the ASARCO exception), Wyoming, North Dakota and South Dakota have been determined to be acceptable. Therefore, EPA is approving these stack height demonstrations. As noted earlier, the ASARCO stack height analyses submitted as part of the Montana SIP revision will be addressed in a separate rulemaking. The Kennecott stack height analysis submitted as part of the Utah SIP has been addressed in a separate action at 53 FR 48942 (December 5, 1988).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the States of Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming was approved by the Director of the Federal Register on July 1, 1982.

Date: March 30, 1989.

William K. Reilly,

Administrator.

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation on for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(45) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(45) In a letter dated May 8, 1986, the Governor submitted revisions to the Colorado Regulation No. 3 (Regulation Requiring an Air Contaminant Emission Notice, Emission Permit Fees) of the Colorado SIP modifying stack evaluations. The changes consisted of (1) new definitions of dispersion techniques, good engineering practice, nearby, and excessive concentrations (Section XII.D.) and (2) rules clarifying technical modeling and monitoring requirements (Section XII.C.).

(i) *Incorporation by reference.* (A) Revisions to the Colorado Regulation No. 3 (Regulation Requiring and Air Contaminant Emission Notice, Emission Permit Fees), Section XII, adopted March 20, 1986, by the Colorado Air Quality Control Commission.

3. Add a new § 52.345:

§ 52.345 Stack height regulations.

The State of Colorado has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). In a letter to Mr. Douglas M. Skie, EPA, dated May 9, 1988, Bradley J. Beckham, Director of the Colorado Air Pollution Control Division stated:

* * * We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modified the July 8, 1985 regulations, EPA will notify the state of the rules that must be changed to comply with the EPA's modified requirements. The State of Colorado agrees to make appropriate changes.

Subpart BB—Montana

4. Section 52.1370 is amended by adding paragraph (c)(18) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(18) In a letter dated March 28, 1986, the Governor submitted modifications to the Montana SIP which revised rules governing stack height and dispersion techniques. In a letter dated November 25, 1985, the Chief of the Air Quality Bureau, Montana, submitted the stack height demonstration analysis with supplemental information submitted on January 28, 1986. EPA is approving the demonstration analysis for all of the stacks except the ASARCO stacks.

(i) *Incorporation by reference.* (A) Revisions to the Administrative Rules of Montana effective on June 13, 1986. The modifications repeal Administrative Rules of Montana (ARM 116.8.1201, 116.8.1202 and 16.8.1203 in Subchapter 12 and adds ARM 16.8.1204 (Definitions), 16.8.1205 (Requirements), and 16.8.1206 (Exemptions).

(B) Stack height demonstration analysis submitted by the State on November 25, 1985 (except for materials pertaining to ASARCO), and January 28,

1986 (except for meterials pertaining to ASARCO and Appendix A).

5. Add a new § 52.1387

§ 52.1387 Stack height regulations

The State of Montana has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 6, 1988, Jeffrey T. Chaffee, Chief, Air Quality Bureau, stated:

* * * We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modifies the July 8, 1985 regulations, EPA will notify the State of the rules that must be changed to comply with the EPA's modified requirements. The State of Montana agrees to make the appropriate changes.

Subpart JJ—North Dakota

6. Section 52.1820 is amended by adding paragraph (c)(17) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(17) In a letter dated April 18, 1986, the Director of the Division of Environmental Engineering, North Dakota Department of Health, submitted the stack height demonstration analysis with supplemental information submitted on July 21, 1987. EPA is approving the demonstration analysis for all of the stacks.

(i) *Incorporation by reference.* (A) Stack height demonstration analysis submitted by the State on April 18, 1986 and July 21, 1987.

Subpart QQ—South Dakota

7. Section 52.2170 is amended by adding paragraph (c)(12) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(12) In a letter dated August 7, 1986, the Governor submitted revisions to the South Dakota SIP adopting federal stack height regulations (Administrative Rules of South Dakota 74:26). In a letter dated August 20, 1986, the Administrator, Office of Air Quality and Solid Waste of South Dakota, submitted the stack height demonstration analysis with supplemental information submitted on December 3, 1986.

(i) *Incorporation by reference.* (A) Revisions to the Administrative Rules of South Dakota 74:26 effective on May 21, 1986. The changes consisted of incorporating definitions for good engineering practices and dispersion techniques into 74:26:01:12, standard for the issuance of construction permit.

(B) Stack height demonstration analysis submitted by the State with letters dated August 20, 1986 and December 3, 1986.

Subpart TT—Utah

8. Section 52.2320 is amended by adding paragraph (c)(22) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(22) In a letter dated May 2, 1986, the Governor submitted revisions to the Utah Air Conservation Regulations addressing GEP stack heights/dispersion techniques and a new Section 17 to the SIP addressing GEP stack height demonstration analysis.

(i) *Incorporation by reference.* (A) Revisions to the Utah Air Conservation Regulations adopted April 18, 1986. The revisions consist of adding stack height definitions (UACR 1.1.128 through UACR 1.1.133) and updating stack height exemptions (UACR 3.8).

(B) Stack height demonstration analysis submitted by the State in a letter dated May 2, 1986.

9. Add a new § 52.2347.

§ 52.2347 Stack height regulations.

The State of Utah has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 27, 1988, F. Burnell Cordner, Director, Bureau of Air Quality, stated:

* * * We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if the EPA's response to the NRDC remand modifies the July 8, 1985 regulations, the EPA will notify the State of the rules that must be changed to comply with the EPA's modified requirements. The State of Utah agrees to process appropriate changes.

Subpart ZZ—Wyoming

10. Section 52.2620 is amended by adding paragraph (c)(19) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(19) In a letter dated August 5, 1986, the Administrator of the Air Quality Division of Wyoming, submitted the stack height demonstration analysis. EPA is approving the demonstration analysis for all of the stacks.

(i) *Incorporation by reference.* (A) Stack height demonstration analysis submitted by the State in a letter dated August 5, 1986.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 309, 314, 315, 316, 317, 319, 322, 324, 330, 333, 335, and 352

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), Title 48 CFR Chapter 3, to make various administrative changes.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Senior Procurement Analyst, Division of Acquisition Policy, telephone (202) 245-8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to make numerous administrative changes as a result of a recent reorganization within the Office of the Secretary. Specifically, office designations and approving officials' titles have been changed to reflect the new designations and titles caused by the reorganization.

Changes are also being made to add reference to the use of the "Taxpayer Identification Number" as required by Federal Acquisition Circular 84-40, which was published in the **Federal Register** (53 FR 43386) on October 26, 1988. Additionally, Subpart 324.2, Freedom of Information Act, is being revised as a result of the recent revision to the Department's implementation of the Act in 45 CFR Part 5.

The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that this rule contains no amendments that would have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department

is not requesting comments on these acquisition regulations and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, no regulatory flexibility statement has been prepared. This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 309, 314, 315, 316, 317, 319, 322, 324, 330, 333, 335, and 352

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Dated: May 31, 1989.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, Chapter 3 of Title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for Parts 301, 302, 303, 304, 305, 306, 307, 309, 314, 315, 316, 317, 319, 322, 324, 330, 333, 335, and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 301—[AMENDED]

301.102 [Amended]

2. The second sentence of section 301.102 is amended by replacing the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics." with "Deputy Assistant Secretary for Management and Acquisition."

301.201 [Amended]

3. Paragraph (a) of section 301.201 is amended by replacing, in the first and second sentences, the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with the title "Deputy Assistant Secretary for Management and Acquisition."; paragraph (b) is amended by replacing "Office of Procurement and Logistics Policy, Office of Procurement, Assistance and Logistics." with "Office of Acquisition and Grants Management." in the first sentence; in the second sentence, replace the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management".

301.270 [Amended]

4. Section 301.270 is amended by replacing, in paragraph (a), the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Deputy Assistant Secretary for Management and Acquisition."; in paragraph (b), the first sentence is amended by replacing "Office of Procurement, Assistance and Logistics, Office of Management Services— OS," with "Office of Acquisition and Grants Management, Division of Contract Operations— OS,"; in the second sentence of paragraph (b), replace the term "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management".

301.304 [Amended]

5. Section 301.304 is amended as follows:

a. In paragraph (a), replace "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management" in the first and third sentences; in the fourth sentence, replace "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Deputy Assistant Secretary for Management and Acquisition."

b. In paragraph (c), replace the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management."

c. In the last sentence of paragraph (d), replace the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management."

301.403 [Amended]

6. Section 301.403 is amended by replacing the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management."

301.404 [Amended]

7. Section 301.404 is amended by replacing the title "Director, Office of Procurement and Logistics Policy" with "Deputy Assistant Secretary for Management and Acquisition."

301.470 [Amended]

8. Section 301.470 is amended by removing the words "Director, Office of Procurement and Logistics Policy as stated" and replacing them with "official designated."

301.670-2 [Amended]

9. Section 301.670-2 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as (a) and (b), respectively, and changing the title in newly relettered paragraph (a) to read "Deputy Assistant Secretary for Management and Acquisition; and."

PART 302—[AMENDED]

302.100 [Amended]

10. The term "Principal official responsible for acquisition" in section 302.100 is amended by replacing "Office of Administrative and Management Services (OAMS-OS)," with "Office of Management and Acquisition (OMAC-OS),"; under the first entry in the list following the introductory paragraph, replace the designation "*OAMS-OS*" with "*OMAC-OS*".

PART 303—[AMENDED]

303.303 [Amended]

11. Section 303.303 is amended by replacing the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics." with "Director, Office of Acquisition and Grants Management."

303.409 [Amended]

12. Paragraph (b)(4) of section 303.409 is amended by replacing, in the last sentence, the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

303.502 [Amended]

13. Paragraph (b) of section 303.502 is amended by replacing, in the last sentence, the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

PART 304—[AMENDED]

304.870 [Amended]

14. In the third sentence of paragraph (c)(4) of section 304.870, replace "Office of Procurement, Assistance and Logistics (OPAL), ASMB." with "Director, Office of Acquisition and Grants Management (DOAGM)."; and, in the following sentence, replace "OPAL" with "DOAGM."

304.7001 [Amended]

15. Section 304.7001 is amended as follows:

a. In paragraph (b)(1), replace the office designation "Division of Management Information Systems Services, OMAS, OS;" with "Office of Financial Operations, Office of Finance;".

b. In paragraph (c), replace "Division of Contract and Grant Operations, Office of Management Services," with "Division of Contract Operations,".

c. In paragraph (d), replace the term "Division of Management Information

Systems Services" with "Office of Financial Operations" in the three sentences in which it appears in the paragraph.

304.7101 [Amended]

16. Paragraph (c) of section 304.7101 is amended by removing, in the entry for the "Office of the Secretary," the comma and everything following the word "Operations."

PART 305—[AMENDED]

305.202 [Amended]

17. In paragraph (b) of section 305.202, replace the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics (DASPAL)" with "Director, Office of Acquisition and Grants Management (DOAGM)" in the first sentence; in the remaining three sentences, replace "DASPAL" with "DOAGM."

PART 306—[AMENDED]

306.501 [Amended]

18. In the first sentence of section 306.501, replace "Director, Office of Procurement and Logistics Policy, OPAL" with "Deputy Assistant Secretary for Management and Acquisition."; under the "OS" listing, replace "Deputy Assistant Secretary for Administrative and Management Services" with "Director, Office of Acquisition and Grants Management."

PART 307—[AMENDED]

307.7003 [Amended]

19. In paragraph (b)(2) of section 307.7003, replace the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

307.7004 [Amended]

20. In paragraph (c) of section 307.7004, replace "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

307.7102 [Amended]

21. In paragraph (e) of section 307.7102, replace "Office of Procurement and Logistics Policy in the Office of Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

PART 309—[AMENDED]

309.403 [Amended]

22. Section 309.403 is amended by replacing, under the term "Initiating official," the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics," with "Deputy Assistant Secretary for Management and Acquisition,".

309.404 [Amended]

23. Section 309.404 is amended by replacing, in paragraph (c), "Office of Procurement, Assistance and Logistics (OPAL)" with "Office of Management and Acquisition (OMAC)."; in paragraph (c)(4), replace "OPAL" with "OMAC."

309.470-1 [Amended]

24. In section 309.470-1, replace "OPAL" with "OMAC."

PART 314—[AMENDED]

314.406-3 [Amended]

25. Paragraphs (e) and (g)(3) of section 314.406-3 are amended by replacing "Office of Procurement and Logistics Policy, OPAL-ASMB" with "Division of Acquisition Policy, Office of Acquisition and Grants Management (OAGM)."

314.406-4 [Amended]

26. Paragraph (c) of section 314.406-4 is amended by replacing "Office of Procurement and Logistics Policy, OPAL-ASMB" with "Division of Acquisition Policy, OAGM."

PART 315—[AMENDED]

315.406-2 [Amended]

27. Paragraph (a)(3) of section 315.406-2 is amended by removing the fourth sentence (in parentheses).

315.406-5 [Amended]

28. Paragraph (a)(2) of section 315.406-5 is amended by:

a. Adding the word "and" after the semi-colon at the end of paragraph (xiv);

b. Removing the semi-colon at the end of the paragraph in parentheses following paragraph (xv);

c. Removing paragraph (xvi);

d. Adding as newly designated paragraph (iii), "(iii) FAR, 52.204-3, Taxpayer Identification."; and

e. Redesignating existing paragraphs "(iii)" through "(xv)" as "(iv)" through "(xvi)," respectively.

PART 316—[AMENDED]

316.702 [Amended]

29. Section 316.702 is amended as follows:

a. In paragraph (d)(2), replace "Director, Office of Procurement and Logistics Policy" with "Director, Division of Acquisition Policy, OAGM."

b. In paragraph (f)(1), replace "Director, Office of Procurement and Logistics Policy (OPLP)," in the second sentence, with "Director, Division of Acquisition Policy (DAP)."; in the third sentence, replace "Director, OPLP" with "Director, DAP."

c. In paragraph (f)(4), replace the designations "Director, Office of Procurement and Logistics Policy" and "Director, OPLP" with "Director, DAP" as they appear throughout the paragraph; also, replace the reference to "OPLP" with "DAP."

PART 317—[AMENDED]

317.7002 [Amended]

30. Section 317.7002 is amended as follows:

a. In paragraph (b)(1), replace the present office designation with "Division of Contract Operations, Office of Acquisition and Grants Management, Office of the Secretary."

b. In paragraph (b)(2), replace the word "Materiel" with "Acquisition."

c. In paragraph (b)(3), replace the words "Administrative Services," with "Contracts and Grants,".

PART 319—[AMENDED]

319.201-70 [Amended]

31. In paragraph (a) of section 319.201-70, add the office designation "Indian Health Service (IHS)," between the existing designations "Health Resources and Services Administration (HRSA) (and each regional Office of Engineering Services)," and "National Institutes of Health (NIH)."

PART 322—[AMENDED]

322.604-2 [Amended]

32. Paragraph (c)(1) of section 322.604-2 is amended by replacing "Deputy Assistant Secretary for Procurement, Assistance and Logistics (DASPAL)." with "Director, Office of Acquisition and Grants Management (DOAGM)." in the first sentence, and "DASPAL" with "DOAGM" in the second sentence.

PART 324—[AMENDED]

33. Subpart 324.2 is revised to read as follows:

Subpart 324.2—Freedom of Information Act

324.202 Policy.

(a) The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5.

(b) The contracting officer, upon receiving a FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) Officer and the Business and

Administrative Law Division of the Office of General Counsel. The contracting officer must remember that only the FOI Officer has the authority to release or deny release of records. While the contracting officer should be familiar with the entire FOIA regulation in 45 CFR Part 5, particular attention should be focused on sections 5.65 and 5.66; also of interest are sections 5.32, 5.33, and 5.35.

PART 330—[AMENDED]

34. Subpart 330.2 is added to read as follows:

Subpart 330.2—CAS Program Requirements

330.201-5 Waiver.

(c) The requirements of FAR 30.201-5 shall be exercised by the Director, Office of Acquisition and Grants Management (DOAGM). Requests for waivers shall be forwarded through normal acquisition channels to the DOAGM.

Subpart 330.3 [Removed]

35. Subpart 330.3 is removed.

PART 333—[AMENDED]

333.102 [Amended]

36. Section 333.102 is amended as follows:

a. In paragraph (c)(1), in the first sentence, replace "Office of Procurement and Logistics Policy (OPLP), OPAL, OASMB, OS," with "Office of Acquisition and Grants Management (OAGM)."; in the second sentence, replace "OPLP" with "OAGM."

b. In the last sentence of paragraph (c)(3), replace "OPLP" with "OAGM."

333.103 [Amended]

37. In paragraph (a) of section 333.103, replace "OPLP" with "OAGM."

333.104 [Amended]

38. Section 333.104 is amended as follows:

a. In paragraph (a)(6), replace "Office of Procurement and Logistics Policy (OPLP), OPAL," with "Office of Acquisition and Grants Management (OAGM),".

b. In paragraphs (b)(1) and (b)(2), replace the term "OPLP" with "OAGM" wherever it appears.

c. In paragraph (c)(2), replace "OPLP" with "OAGM."

d. In paragraph (f), replace "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

333.213 [Amended]

39. Paragraph (a) of section 333.213 is amended by replacing "Director, Office of Procurement and Logistics Policy" with "Director, Division of Acquisition Policy."

PART 335—[AMENDED]

335.070-4 [Amended]

40. In paragraphs (c)(1) and (c)(2) of section 335.070-4, replace "Office of Procurement, Assistance and Logistics" with "Office of Acquisition and Grants Management."

PART 352—[AMENDED]

352.215-71 [Removed]

41. Section 352.215-71 is removed.

352.370 [Amended]

42. In paragraph (b) of section 352.370, replace "Director, Office of Procurement and Logistics Policy (OPLP); Office of Procurement, Assistance and Logistics (OPAL); Office of the Assistant Secretary for Management and Budget (OASMB-OS)." with "Director, Office of Acquisition and Grants Management." In the second and third sentences, replace "Director (OPLP)" with "Director, OAGM."

[FR Doc. 89-13420 Filed 6-6-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-16; Notice 7]

RIN 2127-AA32

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: On November 23, 1987, NHTSA published a final rule extending Standard No. 204's requirements regulating the rearward displacement of the steering control in a 30 miles per hour (mph) barrier crash test to additional light trucks, buses and multipurpose passenger vehicles (MPV's) manufactured on or after September 1, 1991. In order to minimize the impacts of this requirement on multistage manufacturers, the agency specified in the final rule that this new requirement will apply only to vehicles with a gross vehicle weight rating of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

NHTSA received two petitions for reconsideration of this rule filed separately by General Motors (GM) and the National Truck Equipment Association (NTEA). GM argued that the steering control displacement requirements were not practicable for those trucks, buses and MPV's made newly subject to Standard No. 204 with a GVWR greater than 8,500 pounds. NTEA alleged that the requirements were not reasonable, practicable and appropriate, insofar as they apply to multistage manufacturers. Petitioner believed that the standard, as amended, will impose a new testing obligation on multistage manufacturers, notwithstanding the agency's effort to minimize burdens on these manufacturers. It was argued that the agency should reconsider the standard and establish a mechanism by which multistage manufacturers would be excused from "unduly burdensome, cost-prohibitive and infeasible barrier testing requirements."

In the final rule, NHTSA said that the available evidence showed that the standard's requirements were both practicable and appropriate for these vehicles. The petitioners did not provide any new evidence to the contrary, nor did they refer to any previously available evidence that the agency failed to consider in its determination set forth in the final rule. Therefore, the agency reaffirms its prior determination regarding the practicability and appropriateness of these requirements.

NHTSA has reexamined the burdens imposed on multistage manufacturers. The burdens that multistage manufacturers will face in certifying the compliance of their vehicles with Standard No. 204 are not significantly different from the burdens they face currently in certifying that their vehicles comply with other standards whose compliance is determined by the agency in a 30 mph barrier crash. No information was provided showing that the certification responsibilities of multistage manufacturers currently in effect, or as expanded by the final rule at issue, are unduly excessive and that the certification scheme should be amended to reduce the alleged burden. Hence, this notice denies the petitions for changes to the steering control displacement protection requirements.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 204 prohibits more than five inches of rearward displacement by the vehicle's steering assembly in a 30 mph frontal barrier crash. The standard's purpose is to reduce driver injuries and fatalities by limiting the rearward motion of the steering column in a frontal crash.

In November 1978 (43 FR 53364; November 9, 1978), NHTSA acted to reduce steering assembly-related injuries and fatalities to drivers of light truck and van-type vehicles with a GVWR of 10,000 pounds or less, by proposing to extend Standard No. 204 (and two other frontal protection standards) to those vehicles. As proposed in the November 1978 notice, there was no limitation on the unloaded vehicle weight for vehicles proposed to be newly subject to Standard No. 204. During the course of that rulemaking proceeding, however, the agency became aware of possible certification difficulties that would have been experienced by final-stage manufacturers of vehicles manufactured in more than one stage and alterers, had the 1978 proposal been adopted as proposed. Thus, the agency adopted a final rule (44 FR 68470; November 29, 1979) that limited the extended applicability of Standard No. 204 to vehicles with a GVWR of not more than 10,000 pounds and an unloaded vehicle weight of 4,000 pounds or less while the agency studied methods for dealing with final-stage manufacturer certification difficulties.

The certification difficulties of the final-stage manufacturers stemmed from the difficulty of some of those manufacturers and alterers to dynamically test the vehicles they produce. There is a specialized class of small businesses involved in the final stage manufacture of a vehicle manufactured in two or more stages, and/or in the conversion or alteration of new vehicles. Under NHTSA's regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that converts or significantly modifies a new vehicle prior to its first sale to a consumer is a vehicle alterer under NHTSA's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. (Throughout the rest of this preamble, the term "final stage manufacturer" is used to refer to both final stage manufacturers and alterers.) While the overwhelming majority of final stage manufacturers do not have the engineering or financial resources to conduct dynamic testing of the vehicles they have completed, dynamic testing is not necessarily required for their certification. Instead, the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(a); the Safety Act) permits manufacturers, including final stage manufacturers, to use other means to certify their vehicles, provided that due care is exercised in making that determination of compliance with the Federal safety standards.

In 1980, NHTSA further addressed the appropriate balancing of safety concerns with the certification difficulties encountered by final stage manufacturers with respect to safety standards involving dynamic testing. NTEA, together with the Truck Body and Equipment Association, had asked NHTSA to provide relief to final stage manufacturers from certification difficulties arising from the crash test requirements of Standards No. 212, *Windshield Mounting*, and No. 219, *Windshield Zone Intrusion*. (Those certification difficulties were identical to the ones NHTSA acknowledged and addressed in the final rule on Standard No. 204 that is the subject of today's notice.) NHTSA responded by amending Standards No. 212 and 219 (45 FR 22044; April 3, 1980) to limit the maximum unloaded vehicle weight at which a vehicle is tested, to 5,500 pounds. The agency determined that limiting the application of the standards would reduce certification problems for final stage manufacturers while improving occupant safety.

The agency tentatively concluded that the unloaded vehicle weight limitation used in Standards No. 212 and 219 should be considered for Standard No. 204, since the 5,500 pound limit seemed successful in achieving increased occupant safety without unduly burdening final stage manufacturers. Further, the agency believed that its use in Standard No. 204 would achieve consistency with Standards No. 212 and 219.

On April 4, 1985 (50 FR 13403), NHTSA published a notice proposing to amend Standard No. 204, *Steering Control Rearward Displacement* (49 CFR § 571.204), by extending its applicability to certain trucks, buses and MPV's by raising the unloaded vehicle weight limitation from 4,000 pounds to 5,500 pounds. The agency subsequently issued a final rule extending the standard to trucks, buses and MPV's with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. (52 FR 44893; November 23, 1987.) The preamble to that rule explained in detail the agency's conclusion that there was a safety need to extend Standard No. 204's requirements to these vehicles and that compliance with those requirements was feasible for them. The preamble also reflected the agency's desire to minimize the impact of the steering control displacement requirements on small businesses involved in the manufacture of light trucks and MPV's.

With respect to vehicles that are produced by final stage manufacturers which have an unloaded vehicle weight of 5,500 pounds or less and thus are not exempted from the dynamic testing requirements, the final rule noted that the final stage manufacturers of those vehicles would still have means to certify compliance that would not require them to conduct crash testing. First, the final stage manufacturer could stay within the limits set by the incomplete vehicle manufacturer. NHTSA's certification regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what center of gravity, weight, and other limitations must be observed in completing the vehicle in order not to disturb the vehicle's compliance with the safety standards. When the final stage manufacturer observes those limits, it simply states that fact on the certification label. Under these circumstances, its certification of the vehicle's compliance with the safety standards is based on the incomplete vehicle manufacturer's certification. Thus, if the final stage manufacturer observes all of the limits specified by the incomplete vehicle manufacturer, the final stage manufacturer does not have to conduct any testing or analysis to support its certification that the vehicle complies with the safety standards, including the requirements for which compliance is determined in accordance with dynamic test procedures.

Second, if the final stage manufacturer cannot stay within the incomplete vehicle manufacturer's limits in using a given chassis to produce a completed vehicle, the final stage manufacturer may choose to use a chassis with a higher GVWR to produce its vehicle. The higher rated chassis would give the final stage manufacturer greater flexibility in completing the vehicle, since it would have higher limits established by the incomplete vehicle manufacturer. It is also possible that the switch to a higher rated chassis would result in the completed vehicle not being subject to the dynamic testing

requirements, if the completed vehicle had an unloaded vehicle weight of more than 5,500 pounds or a GVWR of more than 10,000 pounds. Even if the completed vehicle were subject to those requirements, by switching to a heavier chassis and staying within the incomplete vehicle manufacturer's limits for that chassis, the final stage manufacturer would avoid the possible necessity of having to take steps such as conducting additional testing or analysis to support its certification that the completed vehicle conformed to all safety standards. The switch to a heavier chassis might offer other potential benefits as well, by reducing the possibility that chassis components, such as wheels, brakes, and axles, would be overloaded and fail during service.

The agency observed in the final rule that if the final stage manufacturer chose not to remain within the incomplete vehicle manufacturer's limits for the chassis under either of these approaches, the final stage manufacturer could do so. However, if a final stage manufacturer did so, it could no longer rely on the incomplete vehicle manufacturer's certification and limits as the basis for certifying the completed vehicle. In such cases, the final stage manufacturer would have to conduct the crash testing or engineering analysis necessary to enable it to certify, with due care, that the completed vehicle complies with applicable safety standards, including the steering control rearward displacement requirement.

Petitions for Reconsideration

Two petitions for reconsideration of the 1987 final rule were filed with the agency. One of the petitioners was General Motors (GM), which asked that the rule be reconsidered on the basis of its practicability. To cure this problem, GM asked that the upper GVWR limit be lowered from 10,000 pounds to 8,500 pounds. The second petitioner was the National Truck Equipment Association (NTEA), a trade association representing some final stage manufacturers and alterers. NTEA said that the rule should be reconsidered because it creates a "new testing obligation" that petitioner asserted is not practical since it "cannot be met by final-stage manufacturers and alterers."

A. GVWR Limits

GM gave two reasons for its request that the application of the requirements be limited to vehicles with a GVWR of 8,500 pounds. First, GM argued the standard is not "practicable," within the meaning of section 103(a) of the Safety Act, for vehicles with a GVWR between 8,500 pounds and 10,000 pounds. According to GM, although the upper limit on applicability was stated in the 1979 final rule in terms of both 10,000 pounds GVWR and 4,000 pounds unloaded vehicle weight, only the latter has as a practical matter been the determinant of applicability. GM said that vehicles with an unloaded vehicle weight of 4,000 pounds or less have a commensurate GVWR of 8,500 pounds or less. Therefore, GM apparently concluded that NHTSA has no information showing that the requirements of Standard No. 204 would be practicable for vehicles with a GVWR between 8,500 and 10,000 pounds.

The agency does not agree with GM that the GVWR limit should be set at 8,500 pounds. If the petitioner is correct that a GVWR of 8,500 pounds or less is commensurate with an unloaded vehicle weight of 4,000 pounds or less, its suggestion of a GVWR limit of 8,500 pounds would negate the increase of the unloaded vehicle weight limit from 4,000 pounds to 5,500 pounds. As discussed in the preamble to the final rule, information and data available to the agency indicate that the extended requirements are practicable with adequate leadtime. For example, Chrylser said that its forward control vehicles could comply with three years of leadtime, and that other types of its vehicles could comply with two years of leadtime. NHTSA believes that the steering column and chassis structural characteristics of vehicles with unloaded vehicle weights between 4,000 and 5,500 pounds do not differ from those vehicles with unloaded vehicle weights less than 4,000 pounds to the extent that there will be insurmountable practicability problems in designing compliant systems.

Further, NHTSA notes that some passenger cars and light trucks currently comply with Standard No. 204 by preventing the intrusion of the steering column through use of means such as a double "U" joint shaft, or a telescoping intermediate shaft. The current production of these compliant designs contradicts GM's assertion that Standard No. 204 is not practicable for the light trucks and vans to which the standard has been extended. In noting the existence of these vehicles, the agency wishes to emphasize that while the existence of currently-manufactured vehicles voluntarily meeting the rearward displacement requirements for new steering controls obviously aids the agency in concluding that the extension of Standard No. 204 is practicable, the existence of those vehicles is not a prerequisite to such a conclusion. The agency may issue safety standards that require improvements in existing technology or which require the development of new technology, providing that sufficient leadtime is afforded the manufacturers. *See, Chrysler Corporation* v. *Department of Transportation*, 472 F.2d 659 (6th Cir. 1972).

In any event, in light of the steps Chrysler and other manufacturers have taken toward achieving compliance of their vehicles with Standard No. 204, NHTSA believes it is practicable for the manufacturers to improve on current designs or develop new ones to meet fully the requirements of 204 for all vehicles made newly subject to the standard within the leadtime provided by the final rule. The petitioner has not provided any information showing that this conclusion is incorrect.

Second, GM argued that a steering control rearward displacement rule should be limited to vehicles with a GVWR of 8,500 pounds or less, and not applied to vehicles with a GVWR of 10,000 pounds or less, to reduce "the potential problem for final stage manufacturers in attempting to assure that their efforts have not disturbed the basis of initial manufacturer's certification to FMVSS 204." The petitioner referred to NHTSA's final rule (52 FR 44898; November 23, 1987) amending Standard No. 208, *Occupant Crash Protection*, to require trucks, buses and MPV's with an unloaded vehicle weight of 5,500 pounds or less and a GVWR of 8,500 pounds or less equipped with manual lap/shoulder safety belts at the front outboard seats to comply with the injury criteria of the standard in a 30 mph barrier crash test. GM said that, in light of the fact that NHTSA set the 8,500 pound GVWR limit in the Standard No. 208 rule to reduce the potential problem for final stage manufacturers in certifying to that standard, the agency should recognize that the same certification difficulties exist with regard to FMVSS No. 204, and therefore, that the GVWR limits for the two rules should be the same. The NTEA also suggested that the GVWR limit in Standard No. 204 should be amended to be consistent with that of the dynamic testing requirements of Standard No. 208.

The agency does not believe that the 8,500 pounds GVWR limit in Standard No. 208 represents a valid reason for reducing the 10,000 pounds GVWR limit in Standard No. 204. The application of each of the two standards to the light truck and van vehicle types was determined by NHTSA based on the

involvement of final stage manufacturers (often small businesses) in the installation of the crash protection systems mandated by FMVSS 204 and 208 and the magnitude of the difficulties they may experience in meeting those requirements. Standard No. 208 involves components which are frequently installed by final stage manufacturers, such as seats, seat belt webbing, and retractors. The seat belt assemblies installed in multi-stage vehicles are frequently purchased separately from the chassis, and the anchorages for those belts are sometimes located on body components installed by the final stage manufacturer. NHTSA's decision to tailor the rule in the manner provided was partially based on information from the Truck Body and Equipment Association, which represents many final stage manufacturers, that 90 to 95 percent of the chassis used by TBEA members involved in final stage manufacturing have a GVWR of greater than 8,500 pounds and would have an unloaded vehicle weight greater than 5,500 pounds when the vehicle is completed. (52 FR 44901)

However, there are no equivalently compelling reasons for narrowing the extension of Standard No. 204. Since an "incomplete vehicle" by definition includes the steering system (49 CFR 568.3), components related to Standard No. 204 compliance—such as the steering system and the steering mounts—are already installed on the chassis by the incomplete vehicle manufacturer when the incomplete vehicle is obtained by the final stage manufacturer. Final stage manufacturers typically would not be installing or modifying this system in any manner. NHTSA notes that the incomplete vehicle manufacturer would also have installed the vehicle's braking system before the incomplete vehicle is delivered to the final stage manufacturer. The agency believes that the basis on which a final stage manufacturer may certify that its completed vehicles complied with the braking standards (Standard No. 105 for hydraulic brake systems and Standard No. 121 for air brake systems) should also enable such a manufacturer to certify compliance with Standard No. 204. That is, the incomplete vehicle manufacturers are responsible for the compliance of their incomplete vehicles, and the final stage manufacturers are responsible for certifying the compliance of the components they mount on the vehicle and that the mounting would not affect the conformance to which the incomplete vehicle manufacturer had previously certified. Since the conformance of the steering system with Standard No. 204 falls in the former category (and is the responsibility of the incomplete vehicle manufacturer) and the conformance of the safety belt system is included in the latter (and is the responsibility of the final stage manufacturer), the agency has determined it is reasonable that the GVRW limits of the extensions of Standards No. 204 and No. 208 are not identical.

GM also argued that structural changes that would be made to vehicles to comply with Standard No. 204 "could drastically affect the aggressivity of those vehicles. This potential would limit the extent to which initial manufacturers would provide certification for efforts anticipated by final stage manufacturers or vehicle alterers."

By these statements, the agency believes GM was repeating its comment on the proposed rule, that the standard could result in stiffer (more "aggressive") front structures for some light trucks and vans which could inflict more damage to vehicles they struck. If GM is renewing this contention in its petition, the agency disagrees, for the reasons given in the preamble to the final rule which responded to this same comment. In that notice, NHTSA stated:

> NHTSA disagrees with * * * GM that the extension will promote more aggressive vehicle designs and negatively affect the safety of occupants of passenger cars and vehicles not covered under today's rule. The vehicles affected by this final rule have already been designed to withstand the 30 mile per hour barrier impact tests required by Standards No. 212, 219 and 301.
>
> * * * GM * * * [did not provide] any information indicating why and to what degree further strengthening of the vehicle's frontal structure is needed to comply with Standard No. 204. NHTSA believes steering column designs are capable of limiting steering column intrusion without having to increase frontal stiffness. Therefore, the agency believes that extending the applicability of the standard need not increase the aggressivity of the vehicles covered by the standard. 52 FR 44894.

GM has not provided any information in its petition showing that the agency based its conclusion on erroneous information, or that the agency should have considered other information in its analysis but failed to do so. Also, GM did not provide any data or information to substantiate its claims about the possibility of increased aggressivity of some light trucks and vans. In the absence of any information showing, for example, which structural changes may be necessary to meet the standard, the degree to which the front stiffness would allegedly increase, or that other steering controls (such as the break-away column used by Volkswagen in the Vanagon) could not be used to meet the standard without increasing frontal structure stiffness. NHTSA will not further consider reducing the GVWR limit of the rule to 8,500 pounds because of alleged increases in aggressivity.

NHTSA has undertaken a careful evaluation of GM's petition for reconsideration of the extension of the steering control rearward displacement requirements of FMVSS No. 204. Based on the available information, the agency reaffirms its previous determination that the standard is appropriate for light truck and van type vehicles with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. Accordingly, the GM petition is denied.

B. Final Stage Manufacturers

The National Truck Equipment Association (NTEA), a trade association representing some distributors, manufacturers and alterers of trucks, asked NHTSA to reconsider the reasonableness and practicability of the steering control displacement requirements as applied to final stage manufacturers. These manufacturers are typically small businesses. NTEA believed that the final rule imposes "a new testing obligation" on final stage truck manufacturers "that realistically cannot be met," and that NHTSA should relieve small businesses from the barrier testing requirements. NTEA stated that it was "unreasonable for NHTSA to adopt a dynamic testing standard that the agency knows cannot be complied with by small business final stage manufacturers and alterers, and then force such small businesses to rely upon the amorphous due care provision."

Together with the petition for reconsideration of the agency's final rule on Standard No. 204, NTEA also submitted a petition requesting that NHTSA reconsider its November 1987 final rule, supra, amending Standard No. 208 to establish dynamic testing requirements for trucks, buses and MPV's with an unloaded vehicle weight of 5,500 pounds or less and a GVWR of 8,500 pounds or less equipped with manual lap/shoulder safety belts at the front outboard seats. Perhaps because both the Standard No. 204 and No. 208 final rules involve a dynamic test requirement, the two petitions submitted by the NTEA and the arguments raised therein are almost identical. In the latter petition, NTEA argued that the dynamic testing requirements were not "practicable" or "reasonable," within the meaning of the Safety Act, for

vehicles that were manufactured in two or more stages, for virtually the same reasons set forth in its petition for reconsideration of the agency's final rule on Standard No. 204. Simply stated, as regards the effect of both Standards Nos. 204 and 208 on final stage manufacturers, NTEA believes that the small businesses that complete multi-stage vehicles do not have the economic or technological expertise to conduct dynamic testing.

NHTSA responded to these arguments raised by the NTEA in the agency's denial of petitions for reconsideration of the November 1987 final rule on Standard No. 208. (53 FR 50221; December 14, 1988). In light of the similarity between the NTEA petitions and between the testing under the two standards, the agency has denied NTEA's petition for reconsideration of the FMVSS No. 204 final rule for the same reasons NHTSA has denied the NTEA petition on Standard No. 208. The arguments against dynamic testing presented in the petition regarding Standard No. 208 were essentially the same as those in the petition regarding Standard No. 204. The agency's reasons for denying the petition on Standard No. 208 are briefly summarized below.

In the notice denying the petition concerning Standard No. 208, NHTSA explained that it agreed with NTEA's assertion that most final stage manufacturers do not have the resources to conduct dynamic testing of their completed vehicles. Indeed, that was one of the reasons why the agency adopted a limited extension of both Standard No. 204 and No. 208 to trucks and vans. However, the agency also repeated its belief that these small manufacturers had several means which would obviate the need to conduct crash testing or engineering analyses in order to certify that their completed vehicles complied with the dynamic testing requirements.

> The final stage manufacturer need not conduct any crash testing or engineering analyses if it completes its vehicles within the limits specified by the incomplete vehicle manufacturer. When the vehicle is completed within those limits, the final stage manufacturer simply states that fact in its certification of the vehicle. When a final stage manufacturer is unable to complete the vehicle within the specifications established by the incomplete vehicle manufacturer, the final stage manufacturer can build the vehicle on a heavier chassis, and remain within the limits specified for that heavier chassis. Again, the final stage manufacturer would not have to conduct any dynamic testing or engineering analyses prior to certifying the vehicle complies with the safety standards. Finally, if a final stage manufacturer chooses to complete a vehicle outside of the specifications established by the incomplete vehicle manufacturer, the final stage manufacturer must conduct the necessary crash testing or engineering analysis to show that the completed vehicle complies with the dynamic testing requirement. (53 FR 50225)

The agency explained that the availability of these alternatives allowed the rule to strike a proper balance between two statutory goals:

> First, the alternatives assure the public that the enhanced safety protection of vehicles that are certified as complying with dynamic testing requirements will be provided in all vehicles subject to those requirements. Second, the alternatives minimize the burdens imposed by the newly-established dynamic testing requirements on multistage manufacturers, most of which are small businesses. *Id.*

In its petition for reconsideration of both final rules on Standard No. 204 and No. 208, NTEA asserted that these alternatives were not sufficiently helpful to final stage manufacturers. With respect to the alternative of completing the vehicle within the specifications established by the incomplete vehicle manufacturer, NTEA asserted that this course of action might not be realistic, because "the customization demanded by the market often makes it impossible to stay within the arbitrary boundaries of the incomplete vehicle manufacturer." With respect to the possibility of using a heavier chassis and remaining within the specifications established for the heavier chassis, NTEA asserted that the contracts offered for bidding by final stage manufacturers often include the desired GVWR of the completed vehicle in the specifications, and that final stage manufacturers that use a heavier chassis would be unlikely to be awarded the contract. Finally, with respect to the possibility of the final stage manufacturers conducting engineering analysis or testing, NTEA asserted that this was not a viable option because the agency has acknowledged that most final stage manufacturers do not have the engineering or financial resources to conduct the necessary testing or engineering analysis.

In response to NTEA, this agency does not understand that group to be arguing that its members should be permitted to act in a manner inconsistent with the Vehicle Safety Act. The essential requirements of the Act and the certification regulations issued thereunder are beyond dispute.

Section 108 of the Safety Act requires that all vehicles subject to a standard comply with that standard. Each vehicle subject to a standard must comply with that standard at the time of sale. This means that a multi-stage vehicle must, as completed by the final stage manufacturer, be in compliance. If a final stage manufacturer were allowed to complete a vehicle without regard to the vehicle's compliance with the standard, public safety would suffer.

Under section 114 of the Safety Act, the manufacturer of a vehicle subject to a standard must certify that the vehicle complies with that standard. To deal with instances in which there is more than one manufacturer, as in the case of multi-stage vehicles, the agency has issued regulations to allocate certification responsibility among the manufacturers. NHTSA believes that its allocation of responsibility is consistent with *Rex Chainbelt, Inc.* v. *Volpe*, 486 F. 2d 757, 761–62 (7th Cir. 1973). In that case, the 7th Circuit held that

> In instances where the customer purchases a chassis cab from its manufacturer and thereafter the mixer from the mixer manufacturer, the "entire vehicle" must be certified via two certifications, with the chassis-cab manufacturer certifying its chassis-cab, and with the mixer certifying its mixer and the effect of the mounting, if any, to obtain effective certification of the "entire vehicle."

To facilitate the modification and, if necessary, the certification of completed vehicles, the certification regulations provide several options for statements to be made by incomplete vehicle manufacturers to subsequent manufacturers. Two options available to incomplete vehicle manufacturers are relevant to manufacturers which expect to make significant changes to incomplete vehicles:

1. Certify that the completed vehicle will comply with the standards if it is completed within specifications established by the incomplete vehicle manufacturer; or

2. State that conformity with the standards is not substantially affected by the design of the incomplete vehicle.

When the incomplete vehicle manufacturer follows the first course of action listed above, it provides specifications that generally establish some limits on the parameters of the completed vehicle, such as its weight, height of center of gravity, and so forth. When the vehicle is completed within the incomplete vehicle manufacturer's specifications, the final stage manufacturer need only so state on its certification label and the responsibility for the vehicle's conformity with the standards rests entirely on the incomplete vehicle manufacturer.

However, when the final stage manufacturer chooses to complete the vehicle outside of the specifications established by the incomplete vehicle manufacturer, the final stage

manufacturer must assume the responsibility for the vehicle's conformity with the safety standards. This means that the final stage manufacturer cannot rely upon the incomplete vehicle manufacturer's specifications as the basis for certifying that the completed vehicle conforms with applicable safety standards. Instead, the final stage manufacturer must conduct its own testing or engineering analysis as the basis for certifying that the completed vehicle conforms with the safety standards.

As noted in the final rule requiring dynamic testing of front seat safety belts in light trucks and light multipurpose passenger vehicles under Standard No. 208 (52 FR 44898, November 23, 1987), very few final stage manufacturers and alterers have the technical and financial resources necessary to conduct testing or engineering analyses to determine compliance with dynamic test requirements. Absent the resources necessary to conduct such testing or engineering analyses, the final stage manufacturer cannot legally complete its vehicles outside the incomplete vehicle manufacturer's specifications. Thus, even before Standard No. 204 applied to final stage manufacturers' completed vehicles, very few of those manufacturers could legally complete vehicles outside the specifications established by the incomplete vehicle manufacturers, because the vast majority of final stage manufacturers lack the resources needed to assume responsibility for the certification of the completed vehicle. NHTSA believes the steering control protection requirements will have a minimal impact on these final stage manufacturers, since they are already obliged, as a practical matter, to complete all of their vehicles within the limits established by the incomplete vehicle manufacturer in any case.

The small percentage of these small businesses that have the necessary resources to conduct crash testing and brake testing or engineering analyses were the only final stage manufacturers that could complete vehicles outside of the incomplete vehicle manufacturer's specifications prior to the establishment of the dynamic testing requirements. These final stage manufacturers can evaluate compliance with the dynamic testing requirements during the engineering analyses or crash testing they now conduct to evaluate the compliance of their completed vehicles with Standard Nos. 212, 219, and 301. If they conduct crash testing at present, the only change would be that the final stage manufacturers would now have to test to FMVSS No. 204, which should not be a significant burden since the test could be combined with testing conducted for the other crash-tested standards. Accordingly, NHTSA disagrees with the NTEA that the extension of Standard No. 204 will significantly affect final stage manufacturers engaged in the production of light trucks and vans.

When the incomplete vehicle manufacturer follows the second course of action listed above; i.e., states that conformance to a particular safety standard is not substantially affected by the design of the incomplete vehicle, the final stage manufacturer is responsible for certifying that the completed vehicle conforms to that safety standard. In this case, the final stage manufacturer is required by the Safety Act to exercise due care in certifying that the completed vehicle complies with the applicable safety standard. Any final stage manufacturer that has the necessary resources to do so may conduct the necessary testing or engineering analysis, and certify that the vehicles it completes from this manufacturer's incomplete vehicles comply with the applicable safety standards. On the other hand, if the final stage manufacturer lacks the financial or engineering resources to conduct the appropriate testing or engineering analyses to exercise due care in its certification, it cannot purchase any incomplete vehicles from manufacturers that state that conformance is not substantially affected by the design of the incomplete vehicle. Instead, these smaller final stage manufacturers must purchase their incomplete vehicles from those incomplete vehicle manufacturers that certify the completed vehicle will comply with the standard when completed within specifications.

When a final stage manufacturer decides not to stay within the specifications of an incomplete vehicle manufacturer, he must assume the responsibilities for compliance and provide certification. The agency cannot exempt the final stage manufacturer from the certification requirements.

The agency can, however, change the applicability of a standard to minimize the certification problems of final stage manufacturers to the extent consistent with the interests of safety. This is precisely what the agency did in specifying the limitations in Standard No. 204 on GVWR and unloaded vehicle weight.

Those vehicles completed by final stage manufacturers within the limits established in the final rule will be subject to Standard No. 204's requirements. The safety need for these vehicles to comply with the dynamic testing requirements is identical to the safety need for compliance by the same size vehicles manufactured in a single stage by the larger manufacturers. Since the dynamic testing requirements also satisfy all other criteria in the Safety Act for vehicles produced by these small manufacturers that are within the established weight limits, NHTSA has no basis for excluding these vehicles from the dynamic testing requirements.

NTEA is correct in suggesting that the extended requirements of Standard No. 204 will impose some additional requirements on final stage manufacturers. However, they will do so only to the extent that those manufacturers do not adhere to the specifications of the incomplete vehicle manufacturers. Further, the dynamic testing requirements of Standard No. 204 do not represent either the first or only instance in which the agency has adopted safety requirements which carry with them compliance and certification costs that may exceed the resources which final stage manufacturers would need if they do not adhere to the specifications of the incomplete vehicle manufacturer and must certify that their vehicles comply with those safety requirements. Only final stage manufacturers that have the necessary resources to conduct 30 mph barrier crash test or engineering analyses of that condition could certify that their completed vehicles complied with the windshield mounting and windshield zone intrusion standards (Standard Nos. 212 and 219, respectively), or the fuel system integrity standard (Standard No. 301). Additionally, only those final stage manufacturers that have the necessary resources to conduct brake testing could certify that their completed vehicles complied with the braking standards (Standard No. 105 for hydraulic brake systems and Standard No. 121 for air brake systems). Notwithstanding the fact that to this agency's knowledge few, if any, of the final stage manufacturers have the necessary financial and technical resources to certify that their completed vehicles comply with these standards, the Safety Act expressly requires them to so certify.

With regard to NTEA's assertion that final stage manufacturers cannot use a heavier chassis because of contract restrictions, there is no indication at this time that the incomplete vehicle manufacturers will have to include limits on specifications in addition to the limits currently set for such specifications as vehicle weight, weight distribution, and center of gravity

height. There is no evidence that the specification established by the incomplete vehicle manufacturers for vehicles subject to the dynamic testing requirements will necessarily be more stringent than the specifications established at the present. The agency does not believe that any incomplete vehicle manufacturer can, as a practical matter, establish unreasonably stringent limitations for its incomplete vehicles, since the final stage manufacturers would then purchase their incomplete vehicles from other manufacturers, who would presumably establish reasonable limitations for their incomplete vehicles. No incomplete vehicle manufacturer has submitted any testing or engineering analyses it has conducted showing what additional limitations it will have to impose on its incomplete vehicles subject to the dynamic testing requirements. Until such evidence becomes available, the agency has no basis for changing the requirements established after considering the currently available information.

After considering these petitions, the agency has concluded that they have not presented any basis on which to change the steering control rearward displacement requirements for light trucks and MPVs. These petitions are, therefore, denied. The requirements of Standard No. 204 set forth in the November 23, 1987 final rule will apply to all subject light trucks and MPVs manufactured on or after September 1, 1991.

Issued on June 1, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-13408 Filed 6-6-89; 8:45 am]

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Proposed Rules

Federal Register
Vol. 54, No. 108
Wednesday, June 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 1989-6]

Contributions and Expenditures; Prohibited Contributions and Expenditures

AGENCY: Federal Election Commission.

ACTION: Second notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed revisions to its regulations at 11 CFR 100.7(b)(8), 100.8(b)(9), and 110.4(a). Paragraphs 100.7(b)(8) and 100.8(b)(9) exempt certain unreimbursed payments for transportation and subsistence costs from the definitions of contribution and expenditure. These regulations implement section 431(8) of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") 2 U.S.C. 431 *et seq.* This Notice seeks comments on three versions of these rules.

11 CFR 110.4(a) prohibits foreign nationals from making contributions and other persons from accepting their contributions in connection with any election for local, State, or Federal public office. The proposed revision would add references to expenditures and would make clear that foreign nationals may not participate in certain election-related activities. Section 441e of the Act is the underlying statutory provision.

The proposed rules that follow do not represent the final views of the Commission on amendments to 11 CFR 100.7(b)(8), 100.8(b)(9), and 110.4(a). The section below on Supplementary Information provides additional information about the regulatory proposals.

DATE: Comments must be received on or before July 7, 1989.

ADDRESSES: Comments must be made in writing and addressed to Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission seeks comments on proposed revisions to its regulations at 11 CFR 100.7(b)(8), 100.8(b)(9), and 110.4(a). Although these proposed rules address unrelated topics, the Commission decided that it is more efficient to combine them in a single rulemaking. The changes in §§ 100.7(b)(8) and 100.8(b)(9) concern discrete issues that do not require a large-scale rulemaking. The changes suggested for § 110.4(a) raise issues that the Commission did not address in its earlier rulemaking devoted to 11 CFR 110.3 through 110.6. *See* 51 FR 27183 (July 30, 1986).

On September 15, 1988, the Commission offered for comment proposed revisions of, *inter alia*, 11 CFR 100.7(b)(8) and 100.8(b)(9). 53 FR 35827. No comments were received. After further consideration of the issues presented by these rules, the Commission developed the several alternative suggestions that it now offers for comment.

A. Travel Expense Exemption

An individual's unreimbursed payments for personal travel expenses are exempt from the definition of contribution if the unreimbursed payments for travel on behalf of a candidate with respect to each election do not exceed $1000 or if the unreimbursed payments for travel on behalf of all political committees of a political party do not exceed $2000 in a calendar year. 2 U.S.C. 431(8)(B)(iv). The Commission's regulations implement this exemption at 11 CFR 100.7(b)(8) and 100.8(b)(9).

The Commission seeks comments on three alternative regulatory proposals. The first proposal, Alternative 1-A, is described within this narrative. The other two proposals, Alternative 1-B and Alternative 1-C, are set out formally as alternative regulations for §§ 100.7(b)(8) and 100.8(b)(9) and are also discussed here.

Alternative 1-A would retain the current regulations, which divide the exempt personal travel expenses into two components or separate categories: transportation expenses and subsistence expenses. The term "subsistence expenses" here includes both meals and lodging. The regulations apply the dollar limitations specified in the governing statute only to unreimbursed transportation expenses incurred by individuals for travel on behalf of a candidate or a political party. No dollar limitations apply to unreimbursed payments by volunteers for usual and normal subsistence expenses that are incidental to the individuals' volunteer activities; these payments are neither contributions nor expenditures regardless of their aggregate value. The present regulations do not exempt unreimbursed payments by paid campaign and party committee workers for their subsistence expenses.

Alternative 1-B, like Alternative 1-A, differentiates between exempt transportation expenses and exempt subsistence expenses. Unlike Alternative 1-A, however, it includes within the subsistence exemption unreimbursed payments by paid campaign and party committee workers for the usual and normal subsistence expenses that they incur while traveling at their own expense on behalf of their candidate or their political party. Alternative 1-B is in substance the same as the proposed revision of 11 CFR 100.7(b)(8) and 100.8(b)(9) set out in the September 15, 1988, Notice of Proposed Rulemaking, 53 FR 35827.

As the September 15, 1988, Notice of Proposed Rulemaking pointed out, when the travel expense exemption was first added to the Act in 1974, it covered volunteers only. *See* 2 U.S.C. 431(e)(5)(D) and (f)(4)(E) (1974). The Commission's earliest regulations on this provision addressed, therefore, a volunteer's transportation and subsistence expenses. *See* 11 CFR 100.4(b)(6) and 100.7(b)(8) (1977). The 1979 amendments to the FECA expanded the class of persons who could travel under the exemption to include "individuals who are being paid by a candidate or party committee." H.R. Rep. 96-422, 96th Cong., 1st Sess. at 8. When the Commission redrafted its regulations in 1980 to reflect the new amendments, however, it broadened only the transportation exemption. The provision allowing only volunteers to incur unlimited personal subsistence expenses in the course of their volunteer activities remained unchanged.

Because the role of paid employees differs from that of volunteers, Alternative 1–B treats the two groups separately. Under the proposed rules, volunteers would continue to be able to pay all their subsistence costs incidental to their volunteer activities. In contrast, paid campaign and party committee workers would be permitted to defray their own subsistence expenses without thereby making a contribution or an expenditure only while they are paying their own transportation costs under the travel exemption.

Paid workers are likely to travel extensively on a candidate's or a party's behalf. An unlimited subsistence exemption for these persons could result in staff members' paying considerable amounts for such costs. Consequently, Alternative 1–B would limit payment of subsistence expenses by such workers to those expenses that they incur while they are traveling under the exemption. This makes it clear that costs paid by paid workers at other times must either be reimbursed or be considered contributions or expenditures. In paying their usual living costs when they are not on travel status, paid workers would not, however, be making contributions or expenditures.

Alternative 1–B differs from Alternative 1–A in two additional respects. First, it would divide 11 CFR 100.7(b)(8) and 100.8(b)(9) into two subsections. Paragraph (i) would cover transportation costs, and paragraph (ii) would cover subsistence costs. Second, it would provide in paragraph (ii) a definition of "usual and normal subsistence expenses." Only personal living expenses, such as the costs of food and lodging, of a volunteer or a paid worker would be included. Other expenses, such as the cost of renting a meeting room, would not come within the exemption. This proposed definition is consistent with the definition of "subsistence" recently promulgated at 11 CFR 106.2(b)(2)(iii). *See* 52 20864, 20875 (June 3, 1987).

Alternative 1–C would provide a new approach to the travel expenses exemption. Unlke the other two alternatives, this proposed revision would make no distinction between expenses incurred by paid campaign or party committee workers and expenses incurred by volunteers. In addition, the dollar limitations of the statutory travel exemption would apply not only to an individual's unreimbursed transportation expenses but also to that individual's unreimbursed lodging expenses. The two kinds of expenses would be aggregated, and the total counted against the pertinent dollar limitations. The individual's own unreimbursed meal expenses, however, would be subject to no dollar limitations; they would be totally exempt.

The Commission welcomes comment on these three alternative approaches and suggestions for other approaches.

B. Foreign Nationals

Section 441e of the Act prohibits a foreign national, directly or through another person, from making a contribution in connection with any election for political office or in connection with any selection of candidates for political office. Neither the statute nor the current implementing regulation, 11 CFR 110.4(a), refers explicitly to expenditures by foreign nationals. When the Act prohibits contributions by a certain class of persons, it usually also prohibits expenditures by that class in order to ensure that the persons cannot accomplish indirectly what they are prohibited from doing directly. See, *e.g.*, 2 U.S.C. 441b. To foreclose the indirect violation of section 441e, the Commission proposed to revise 11 CFR 110.4(a)(1) to explicitly prohibit expenditures as well as contributions. The clarifying language would cover independent expenditures by foreign nationals as well as other kinds of expenditures.

The revision also would add a new paragraph (a)(3), to prohibit a foreign national from participating in election-related decisions by corporations, labor organizations, or political committees, including their decisions concerning contributions and expenditures. Present paragraph (a)(3) would become paragraph (a)(4).

The prohibition on contributions by foreign nationals has its origin in legislation that predates the FECA, the 1966 amendments to the Foreign Agents Registration Act. In 1976, in addition to remedying the constitutional infirmities that *Buckley* v. *Valeo*, 424 U.S. 1 (1976), had found in the FECA, Congress incorporated into the FECA the foreign nationals provision, codified at 18 U.S.C. 613. The only change that Congress made was to replace the earlier statute's criminal penalties with new penalty and enforcement provisions.

Nothing in section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion. *See* S. Rep. No. 94–677, 94th Cong., 2d Sess. 1, 11 (1976). *Cf.* H.R. Rep. No. 96–422, 96th Cong., 1st Sess. 11 (1979) ("Since all of these provisions are specific exemptions to the definition of contribution, exemptions from the expenditure definition are not necessary.") Further, under the 1976 amendments to the FECA, "contribution" and "expenditure" are interrelated terms. For example, an expenditure made by a person in cooperation, consultation, or concert with a candidate or a committee is an in-kind contribution. 2 U.S.C. 441a(a)(7)(B). And when receiving an in-kind contribution, a political committee reports that activity as both an expenditure and a contribution. 11 CFR 104.13(a)(2). In general, a political committee reports the contributions that it makes to candidates as expenditures. *See* 11 CFR 100.8(a)(1) and 104.3(b).

The Commission faced an analogous problem in 1977 when it drafted regulations to implement section 441c(a) of the FECA (prohibition on contributions by Government contractors). See the Explanation and Justification of 11 CFR 115.2 found in "Communication from the Chairman," H.R. Doc. No. 95–44, 95th Cong. 1st Sess. 121 (January 12, 1977).

The Commission has not yet had to address directly the legality of expenditures by foreign nationals. For example, the advisory options concerning corporations owned by foreign principals have relied upon representations by the requesters that no foreign national would participate in the decisions by the corporations' separate segregated funds regarding the funds' contributions *or expenditures*. See *e.g.*, Advisory Opinion 1982–10. Thus, although the Commission has never directly ruled on the propriety of foreign nationals' making expenditures or of their involving themselves in decisions affecting political committees, the Commission has consistently assumed that the statutory prohibition governing foreign nationals covers these activities.

The Commission did not expressly address this topic in its July 1986 Notice of Proposed Rulemaking on 11 CFR 110.3 through 110.6. See 51 FR 27183, 27186–87 (July 30, 1986). Nor did the public's comments raise the issue. Because reopening the 1986 rulemaking would further delay its completion, the Commission decided to include the proposed revisions to the foreign nationals regulations in this separate, miscellaneous rulemaking.

The Commission welcomes comments on these proposed revisions to 11 CFR 110.4(a).

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Aliens, Political committees and parties.

Certification of No Effect Pursuant To 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble it is proposed to amend 11 CFR, Chapter I, Parts 100 and 110 as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. By revising §§ 100.7(b)(8) and 100.8(b)(9) to read as follows:

Alternative 1–B

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(8)(i) No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of a candidate do not exceed $1,000 with respect to a single election. No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed $2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for that individual's usual and normal subsistence expenses that the individual incurs while traveling under the exemption set forth in paragraph (b)(8)(i) of this section is not a contribution. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses that the volunteer incurs at any time incidental to his or her volunteer activity is not a contribution. For purposes of this section, "usual and normal subsistence expenses" means costs incurred by an individual, including a volunteer, for his or her personal living expenses, such as the costs of food and lodging.

* * * * *

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(9)(i) No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of a candidate do not exceed $1,000 with respect to a single election. No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed $2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for that individual's usual and normal subsistence expenses that the individual incurs while traveling under the exemption set forth in paragraph (b)(9)(i) of this section is not an expenditure. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses that the volunteer incurs at any time incidental to his or her volunteer activity is not an expenditure. For purposes of this section, "usual and normal subsistence expenses" means costs incurred by an individual, including a volunteer, for his or her personal living expenses, such as the costs of food and lodging.

* * * * *

Alternative 1–C

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(8)(i) No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of a candidate do not exceed $1,000 with respect to a single election. No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed $2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for his or her own meal expenses that are incidental to the individual's activity on behalf of a candidate or on behalf of a political committee of a political party is not a contribution.

* * * * *

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(9)(i) No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of a candidate do not exceed $1,000 with respect to a single election. No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed $2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for his or her own meal expenses that are incidental to the individual's activity on behalf of a candidate or on behalf of a political committee of a political party is not an expenditure.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441i.

4. By revising paragraph 110.4(a) to read as follows:

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).

(a) *Contributions or expenditures by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution or an expenditure, or expressly or impliedly promise to make a contribution or an expenditure, in connection with a convention, a caucus, or a primary, general, special, or runoff election in connection with any local, State, or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(4) For purposes of this section, "foreign national" means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

* * * * *

Dated: June 1, 1989.

Lee Ann Elliott,

Vice Chairman, Federal Election Commission.

[FR Doc. 89-13486 Filed 6-6-89; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-88-6]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 2, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25849.

Petitioner: Victims of Pan Am Flight 103.

Regulation Affected: 14 CFR Part 108.

Description of Petition: To require the following on international flights: (1) A positive match of checked baggage with passengers; (2) hand-inspection of all carry-on baggage; (3) examination of all checked baggage by physical inspection, a Thermal Neutron Analysis (TNA) device or a colorized electronic x-ray; and (4) a ban of electronic equipment large enough to contain explosives that could destroy the plane until carriers have colorized electronic x-rays or TNA devices.

Petitioners' Reason for the Rule: The petitioners believe that there is a need for increased security because not all that is humanly possible has been done to safeguard air travel from terrorists.

Docket No.: 25850.

Petitioners: Aviation Consumer Action Project and Victims of Pan Am Flight 103.

Regulation Affected: 14 CFR Part 108.

Description of Petition: After FAA evaluation of the credibility of threats against international air travel and notification to air carriers, to require air carriers to—(1) Notify passengers and flight crewmembers of credible threats to flights, (2) establish a hotline to supply information about all threats, and (3) publicize the hotline number by signage at airports and imprinting of tickets.

Petitioners' Reason for Rule: The petitioners believe that airline passengers and crews should be able to determine for themselves whether to take the risk of flying in the face of a terrorist threat.

[FR Doc. 89-13449 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-35-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which currently requires repetitive inspections of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary. That action was prompted by a report of the loss of nose gear steering. This proposal would require retorqueing of the steering cuff ring nut, repetitive inspections for security and lockwire integrity at revised intervals, and installation of a modification which terminates the need for the repetitive inspections. This action is prompted by further investigation which revealed that loss of the ring nut torque can occur whether or not the lockwire is intact. This condition, if not corrected, could result in loss of control of the airplane on the ground.

DATES: Comments must be received no later than July 31, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by intersted persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-35-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 6, 1988, FAA issued AD 88-22-05, Amendment 39-6047 (53 FR 41152; October 20, 1988), applicable to British Aerospace Model BAe 146 series airplanes, that requires repetitive inspections of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary. That action was prompted by a report of the loss of nose gear steering. This condition if not corrected, could result in loss of control of the airplane on the ground.

Since issuance of that AD, the manufacturer has conducted further investigation which revealed that loss of ring nut torque can occur whether or not the locking wire is intact. Loss of torque, failure of the locking wire, and unscrewing of the nut can lead to the same unsafe condition that was addressed in the existing AD.

British Aerospace has issued Service Bulletin 32-A95, Revision 1, dated December 2, 1988, which describes additional procedures for retorqueing the nose wheel steering cuff ring nut, in addition to the existing inspections for broken locking wire, security of the ring nut, alignment of the paint mark, and repair, if necessary. This revision to the service bulletin also recommends changes to the repetitive inspection intervals and references a modification of the nose wheel steering cuff ring nut locking means, modification HCM70409A, which, if installed, eliminates the need for repetitive inspections.

British Aerospace has also issued Service Bulletin 32-95-70409A, dated December 12, 1988, which describes procedures for modification of the nose landing gear steering cuff ring nut locking means. This modification introduces an improved ring nut locking system, which, if installed, terminates the need for the repetitive inspections.

The United Kingdom Civil Aviation Authority (CAA) has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Administration and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would supersede AD 88-22-05, Amendment 39-6047, to require checks of the torque on the nose gear steering cuff ring nut; repetitive inspections of the nose wheel steering cuff ring nut for locking wire integrity, security of the cuff ring nut, and correct alignment of the nut paint mark; and repair, if necessary. This proposed AD would also require installation of an improved locking arrangement for the cuff ring nut, in accordance with the service bulletin previously mentioned. Installation of the improved cuff ring nut locking means is considered to be terminating action for the repetitive inspection requirements in the proposed AD.

It is estimated that 45 airplanes of U.S. registry would be affected by this AD. It would take approximately one-half manhour per airplane to accomplish the additional inspections required by this amendment. It would require approximately one and one-half manhours to accomplish the required modification at an average labor charge of $40 per manhour. The parts will be provided by the manufacturer at no cost. Based on these figures, the total additional cost impact of this AD on U.S. operators is estimated to be $3,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-22-05, Amendment 39-6047 (53 FR 41152; October 20, 1988), as follows:

British Aerospace: Applies to all British Aerospace Model BAe 146 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of control of the airplane on the ground, accomplish the following:

A. Within 100 landings after the effective date of this AD, or within 100 landings after the last inspection accomplished in accordance with AD 88-22-05, Amendment 39-6047, whichever occurs later, check the torque on and mark the nose wheel steering cuff ring nut, in accordance with the procedures in paragraph 2.A. of British Aerospace Service Bulletin 32-A95, Revision 1, dated December 2, 1988.

1. If the ring nut torque loading is found to be incorrect, prior to further flight, re-torque in accordance with paragraph 2.A.(2) of the service bulletin, and reinspect in accordance with paragraph 2.B. of the service bulletin within 30 days and thereafter at intervals not to exceed 300 landings.

2. If the ring nut torque loading is found to be within the limits specified in the service bulletin, repeat the inspections in accordance with paragraph 2.B. of British Aerospace

Service Bulletin 32-A95, Revision 1, dated December 2, 1988, at intervals not to exceed 300 landings.

Note: Paragraph 2.A. of British Aerospace Service Bulletin 32-A95 refers to British Aerospace Service Bulletin 32-29 for checking the steering friction damper torque.

B. Within 2,500 landings after the effective date of this AD, modify the nose wheel steering ring nut locking means in accordance with British Aerospace modification Service Bulletin 32-95-70409A, dated December 12, 1988. Installation of this modification constitutes terminating action for the inspection requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 30, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13457 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-13]

Proposed Revision to Transition Area, Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Albemarle, NC, transition area. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) is planned for Runway 22 at the Stanly County Airport. This revision would add an arrival area extension for protection of instrument flight rules (IFR) aircraft executing the new SIAP. Also, a minor correction would be made to the geographic position coordinates of the Stanly County Airport.

DATES: Comment must be received on or before July 14, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-13, P.O. Box 20636, Atlanta, Georgia 30320

The Official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Albemarle, NC, transition area. This action would add an arrival area extension to afford airspace protection for IFR aircraft executing a NDB SIAP planned for Runway 22 at the Stanly County Airport. Also, a minor correction would be made to the geographic position coordinates of the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Albemarle, NC [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Stanly County Airport (Lat. 35°24'54" N., Long. 80°09'04" W.); within three miles each side of the 208° and 041° bearings from the Stanly county NDB (Lat. 35°24'42" N., Long. 80°09'23" W.) extending from the 7-mile radius area to 8.5 miles southwest and northeast of the NDB.

Issued in East Point, Georgia, on May 23, 1989.

William D. Wood,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 89-13458 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220-AA74

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise Part 335 of its regulations, which relates to sickness benefits under the Railroad Unemployment Insurance Act (Act), in order to delete obsolete provisions, to liberalize certain time limits relating to the filing of claims, to incorporate the 1988 amendments to the Act, and to make the regulation easier to read and understand.

DATE: Comments must be submitted on or before July 7, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, Bureau of Law, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Unemployment Insurance Act was amended to eliminate maternity benefits as a separate category of benefits available to female railroad employees. The Railroad Unemployment Insurance Act now makes sickness benefits available to a female railroad employee for days on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth. Accordingly, Subpart B, which treats maternity benefits as a separate and distinct category of benefits, is proposed to be removed.

In addition, the Board proposes to revise § 335.104, Filing a Statement of Sickness and Claim for Sickness Benefits, to more clearly define the circumstances under which late forms will be accepted as timely filed and to allow a claimant 15 days to file a claim for sickness benefits for a particular 14-day claim period. (See proposed § 335.4.)

The Board also proposes to amend § 335.103 to add clinical psychologists and certified nurse mid-wives to the list of medically qualified individuals who may issue statements of sickness in support of the payment of sickness benefits.

In addition, the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647) amended section 2(e) of the Railroad Unemployment Insurance Act so as to provide that no sickness benefits may be paid to an employee in his or her first registration period in a benefit year. Part 335 is proposed to be revised to explain how this waiting period will be applied to claims for sickness benefits under the Railroad Unemployment Insurance Act. See proposed § 335.6. Finally, all sections have been completely rewritten to make them easier to read and understand.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections contemplated by this Part have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, Part 335 of Title 20 of the *Code of Federal Regulations* is proposed to be revised to read as follows:

PART 335—SICKNESS BENEFITS

Sec.

Authority: 45 U.S.C. 362(i) and 362(l).

§ 335.1 General.

(a) *Statutory basis.* The Railroad Unemployment Insurance Act provides for the payment of sickness benefits to a qualified railroad employee for days of sickness within a period of continuing sickness. To establish basic eligibility for sickness benefits, a qualified employee must have at least four consecutive days of sickness with respect to each period of continuing sickness. The terms "day of sickness" and "period of continuing sickness", as used in this part, are defined in sections 1(k) and 2(a) of the Act, respectively, and paragraphs (b) and (c) of this section. As evidence of days of sickness based upon illness or injury or upon pregnancy, miscarriage or childbirth, section 1(k) requires an employee to file a statement of sickness. Other information that is required to identify an employee's days of sickness is obtained by means of an application for sickness benefits at the beginning of each period of continuing sickness and by means of a claim for sickness benefits which is filed for each registration period within a period of continuing sickness. The term "registration period", generally refers to a period of 14 consecutive days and is defined in paragraph (d) of this section.

(b) *Day of sickness.* The term "day of sickness" means, in general, any calendar day, including days that would normally be rest days, on which an employee is not able to work because of any physical or mental illness or injury. With respect to a female employee, a "day of sickness" also includes any calendar day on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth.

(c) *Period of continuing sickness.* (1) The term "period of continuing sickness" refers to a period of time when an employee is not able to work on account of illness, injury, sickness or disease, including inability caused by pregnancy, miscarriage or childbirth. An employee has a period of continuing sickness under either of these circumstances:

(i) He or she has any number of "consecutive" days of sickness based on one or more infirmities; or

(ii) He or she has any number of "successive" days of sickness based on a single infirmity and there is no interruption of more than 90

"consecutive" days which are not days of sickness.

(2) Days of sickness are "consecutive" when they occur one after another continuously and without interruption by any day that is not a day of sickness. Days of sickness are "successive" when one or more days of sickness follow any day of sickness with an interval of one or more days that are not days of sickness.

Example: An employee is sick for 11 "consecutive" days from October 1 through October 11, meaning that each day in the period October 1 through October 11 is a day of sickness and there is no day in that period that is not a day of sickness. If the employee also had days of sickness on October 16, 17, 18, 21 and 22, those five days are considered "successive" days of sickness.

(3) A period of continuing sickness with respect to any employee begins with the first day of a number of consecutive days of sickness or with the first day of a number of successive days of sickness attributable to a single cause with no interval of more than 90 days that are not days of sickness. In the example given in paragraph (c)(2) of this section, October 1 begins a period of continuing sickness. The days October 16, 17, 18, 21, and 22 are in the period of continuing sickness beginning October 1, and benefits are payable for them, provided that the employee's inability to work on those five days is due to one or more of the same infirmities that caused the employee to be unable to work on the days from October 1 through October 11. Otherwise, October 16 begins another period of continuing sickness.

(4) A period of continuing sickness ends when either of these circumstances occurs:

(i) 91 consecutive days have elapsed none of which is a day of sickness resulting from the infirmity that was the basis for the preceding days of sickness; or

(ii) One or more days that are not days of sickness have elapsed and a statement of sickness is filed with respect to a day of sickness based on an infirmity other than any infirmity causing inability on the preceding days of sickness. The end of a benefit year, generally the 12-month period beginning July 1 of any year and ending June 30 of the next year (see 45 U.S.C. 351(m)), does not end a period of continuing sickness. In the example in paragraph (c)(2) of this section, if the inability to work on October 16 was not due to an infirmity or infirmities that caused the inability to work on October 11, then a period of continuing sickness ends on October 11. A new application and statement of sickness would be required in order for the employee to be paid sickness benefits for days beginning October 16. See § 335.2 of this part.

(5) A period of continuing sickness can be interrupted, provided that:

(i) The interruption is for not more than 90 consecutive days; and

(ii) The days of sickness after the interruption are due to one or more of the same causes as the days of sickness before the interruption.

A period of continuing sickness can be interrupted any number of times so long as each interruption is not more than 90 days and the days of sickness are all due to the same cause. If a period of continuing sickness is caused by more than one infirmity, any one of the infirmities can be considered as the single continuing cause that will permit the interruption of the period of continuing sickness for not more than 90 days without ending it.

(d) *Registration period.* The term "registration period" means, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a period of continuing sickness is filed in his or her behalf in accordance with this part, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a period of continuing sickness was filed in his or her behalf, and ends with whichever is the earlier of:

(1) The thirteenth day thereafter; or

(2) The day immediately preceding the day with respect to which a statement of sickness for a new period of continuing sickness is filed in his or her behalf. However, each of the successive 14-day periods in an extended sickness benefit period shall constitute a registration period.

(e) *Liability for infirmity.* When sickness benefits are paid to an employee on the basis of an infirmity for which he or she recovers a personal injury settlement or judgment, the Board shall receive reimbursement for the sickness benefits in accordance with Part 341 of this chapter.

§ 335.2 Manner of claiming sickness benefits.

(a) *Forms required for claiming benefits.* To claim sickness benefits for a period of inability to work due to an illness or injury, or in the case of a female employee, pregnancy, miscarriage, or childbirth, an employee must file the following forms:

(1) An application for sickness benefits at the beginning of each period of continuing sickness;

(2) A statement of sickness to accompany the employee's application;

(3) A claim for sickness benefits for each 14-day registration period during the employee's period of continuing sickness; and

(4) A supplemental doctor's statement, if the adjudicating office requests additional proof of the employee's inability to work.

(b) *Mailing or delivering the forms.* The forms required by paragraph (a) of this section may be mailed or delivered to any Board office. If the Board is satisfied that the employee is too sick or injured to execute the required forms, the Board may accept forms executed by someone in the employee's behalf. Instructions for completing and filing the forms are printed on the forms themselves.

(Approved by the Office of Management and Budget under control numbers 3220-0034, 3220-0039 and 3220-0045)

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* A statement of sickness and any required supplemental doctor's statement shall be executed by any of the following individuals:

(1) A licensed medical doctor;

(2) A licensed dentist if the infirmity relates to the teeth or gums;

(3) A licensed podiatrist or chiropodist if the infirmity relates to the feet or toes;

(4) A licensed chiropractor;

(5) A clinical psychologist;

(6) A certified nurse mid-wife; or

(7) The superintendent or other supervisory official of a hospital, clinic, or group health association, or similar organization, in which all examinations and treatment are conducted under the supervision of licensed medical doctors or under the supervision of licensed chiropractors, and in which medical records are maintained for each patient.

(b) *Use of Board form or other form.* The statement of sickness and supplemental doctor's statement referred to in paragraph (a) of this section shall be completed on the forms prescribed by the Board, except that other standardized medical forms may be substituted if they provide the same information as that called for by the Board's forms.

§ 335.4 Filing statement of sickness and claim for sickness benefits.

(a) *General requirement.* Except as provided in paragraph (e) of this section, statements of sickness and claims for sickness benefits must be filed within the time limits specified by this section. Failure to comply with the time restrictions on filing claims will result in a denial of benefits for days for which

timely statements and claims are not filed, as such days would not be considered days of sickness.

(b) *Statement of sickness.* An employee shall file a statement of sickness within ten calendar days of the first day that he or she wishes to claim as a day of sickness. For example, if an employee which to claim sickness benefits for days starting November 1, the statement of sickness should reach the Board no later than November 10. If the statement of sickness is received November 11, the employee cannot be paid sickness benefits for November 1. Such day would not be considered as a "day of sickness", unless the form may be considered as timely filed under paragraph (d) (3), (4) or (5) of this section.

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 15 days of the ending date shown on the claim form, or within 15 days of the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

Example: If a form for claiming sickness benefits is mailed to an employee on July 13 for the period from July 1 to July 14, the employee must file the claim within 15 days of July 14 (on or before July 29) to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 15 days of July 16 (on or before July 31).

(d) *When form considered timely filed.* The Board will consider a statement of sickness or a claim for sickness benefits as timely filed if:

(1) The statement or form was received in a Board office within the prescribed time; or

(2) The statement or form was mailed to a Board office in accordance with instructions printed on the form and was received as such office; or

(3) The employee made a reasonable effort to file the statement of sickness or claim form within the presecribed time but was prevented from doing so by circumstances beyond his or her control, and such statement or claim was received at a Board office within a reasonable time following the removal of the circumstances that prevented the employee from filing the form. The phrase "circumstances beyond his or her control" shall not include an employee's forgetfulness or lack of knowledge of the sickness benefit program or the time limit for filing for sickness benefits or any other lack of diligence by the employee. For the purposes of this provision, if a statement of sickness is not received within the prescribed time but is received within 30 days of the first day that an employee intends to claim as a day of sickness, the Board will consider that the employee made a reasonable effort to file the statement within the prescribed time, unless it is clear on the basis of affirmative evidence that the delay was not the result of circumstances beyond the employee's control; or

(4) The employee mistakenly registered for unemployment benefits when he or she should have applied for sickness benefits for the day or days claimed and the appropriate statement of sickness was then received at an office of the Board within a reasonable time after unemployment benefits were denied; or

(5) A female employee not able to work because of pregnancy, miscarriage, or childbirth filed an incorrect statement of sickness form within the prescribed time and after being so informed, filed the correct statement of sickness form within a reasonable period of time thereafter.

Notwithstanding the foregoing, any claim that is not filed within two years of the day or days claimed shall not be considered as timely filed, and such day or days shall not be considered as days of sickness.

(e) *Days for which no statement of sickness deemed filed.* A statement of sickness shall not be deemed to be filed with respect to any day in a benefit year in which the employee is not a qualified employee as defined in section 3 of the Railroad Unemployment Insurance Act or has exhausted his or her rights to sickness benefits under the Act. See Part 337 of this chapter.

§ 335.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Railroad Unemployment Insurance Act. Such form or forms shall be filed within the time prescribed in § 335.4 of this part. Under these circumstances, the word "employee" as used in § 335.4(b) of this part and as used in § 335.4(d)(3) of this part shall include the individual or individuals by or in behalf of whom the form is filed. The order of distribution for benefits due but unpaid as of the date of an employee's death is the same as the order of distribution for annuities unpaid at death under the Railroad Retirement Act and may be found at § 234.31 of this title.

§ 335.6 Payment of sickness benefits.

(a) Waiting period. A qualified employee's first registration period in any benefit year is his or her waiting period, provided that such employee has at least five days of sickness in such registration period, four or which must be consecutive, and files a timely claim for sickness benefits for such period. No benefits are payable for any day of sickness in such registration period.

(b) Subsequent registration period. With respect to any subsequent registration period in the same benefit year and the same period of continuing sickness, the Board will pay benefits for each day of sickness in excess of four during such registration period.

(c) Examples:

Example 1: An employee has a period of continuing sickness running from May 1 through May 31. All of those days are days of sickness. The employee returned to work June 1. His first registration period in that period of continuing sickness is May 1 to May 14. That registration period, if it is the employee's first one in the benefit year, is a waiting period, and no benefits are payable for any day of sickness therein. The employee's second registration period is May 15 to May 28, and benefits will be paid for each day of sickness in excess of four during such period. The employee's third registration period is May 29 to June 11, but since he or she returned to work on June 1 the employee has only three days of sickness (May 29, 30 and 31), and hence no sickness benefits are payable for that period.

Example 2: An employee has a period of continuing sickness beginning on May 1 and ending on July 31, with all days in the period being days of sickness. The employee's first registration period in the period of sickness is May 1 to May 14. Because that registration period is the employee's first one in the benefit year, the period is the employee's waiting period and no benefits are payable for any of the days therein. Benefits are payable for each day in excess of four during each of the employee's next four registration periods of May 15 to May 28, May 29 to June 11, June 12 to June 25, and June 26 to July 9. July 10 is the beginning date of a new benefit year for the employee. Because the registration period July 10 to July 23 is the employee's first one in the new benefit year, the period is the employee's waiting period and no benefits are payable for any of the days of sickness in the period. The employee's second registration period in the new benefit year is July 24 to August 6. The employee has eight days of sickness in that period, having been found able to return to work as of August 1. Benefits are payable for four days of sickness in that period.

(d) The gross amount of sickness benefits for any registration period in a benefit year, following the waiting period for such year, shall be computed by multiplying the number of days of sickness in excess of four by the employee's daily benefit rate, as

computed under Part 330 of this chapter. From such gross amount the Board will deduct the amount of any social insurance payment apportionable to days of sickness in the registration period, any tier I railroad retirement employment tax imposed under Chapter 22 of the Internal Revenue Code of 1986, and the amount of any overpayment being recovered under Part 340 of this chapter. The net amount remaining shall then be certified to the United States Treasury Department for payment to the employee, unless a portion of such amount has been attached in accordance with Part 350 of this chapter.

(e) Sickness benefits shall continue to be certified for payment pursuant to the foregoing paragraphs for the duration of the employee's period of continuing sickness, subject to the statutory maximums prescribed in section 2(c) of the Railroad Unemployment Insurance Act. See also Part 336 of this chapter.

Dated: May 30, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-13455 Filed 6-6-89; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42094B; FRL 3599-5]

Cyclohexane; Proposed Test Rules; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is reopening the comment period on its proposed rule under section 4 of the Toxic Substances Control Act (TSCA), to require testing on cyclohexane (52 FR 19096; May 20, 1987). This additional period will permit comment on an additional finding supporting the proposed rule.

DATES: Written comments must be received by July 7, 1989. If persons request an opportunity to submit oral comments by July 7, 1989, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information or arranging to speak at the meeting see Unit III. of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-42094B) to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

The public record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-1404.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 20, 1987 (52 FR 19096), EPA issued a proposed rule for cyclohexane for health effects testing (Ref. 1). EPA is reopening the comment period to permit comment on an additional finding supporting the proposed rule. The non-confidential information on which this additional finding is based is now available for review in the public docket.

I. Background

EPA proposed health effects testing for cyclohexane under secion 4 of the Toxic Substances Control Act (TSCA) (Ref. 1). EPA concluded in its proposed rule (Ref. 1) that there is substantial production of cyclohexane and there is or may be substantial human exposure to cyclohexane; that there are insufficient data and experience to determine the effects of manufacturing, processing, and use of cyclohexane on human health; and that testing is necessary to develop these data.

II. Emissions/Releases to the Environment

On the basis of recently compiled information obtained pursuant to section 313 of the Superfund Amendments and Reauthorization Act (SARA), Pub. L. 99-499, EPA also finds under section 4 of TSCA that cyclohexane "* * * enters or may reasonably be anticipated to enter the environment in substantial quantities * * *." (15 U.S.C. sec. 2603(a)(1)(B)(i)). EPA is reopening the comment period to solicit comment on this additional finding.

Title III of SARA, also known as "The Emergency Planning and Community Right-to-Know Act of 1986," requires owners and operators of facilities that manufacture, process, or otherwise use certain listed toxic chemicals to provide information on the amount of release of such chemicals to EPA by July 1 of each year. Cyclohexane is on the list of toxic chemicals provided by Congress (see 40 CFR 372.65 (1988)). EPA has reviewed the 1988 submissions of 1987 release data and has determined that cyclohexane is released into the environment in substantial quantities. Specifically, EPA has determined that 1987 emissions of cyclohexane exceeded 4.77 million kilograms (10.5 million pounds (Ref. 2)) and EPA has concluded that such release is sufficient basis for a finding of substantial release under TSCA section 4(a)(1)(B.) EPA has added the Toxic Release Inventory System (TRIS) data base printout of SARA section 313 submissions on cyclohexane (Ref. 3) to the rulemaking record for this proposed test rule and solicits comment on inclusion of this additional finding in the final rule.

III. Public Meeting

If persons indicate to EPA that they wish to present oral comments on this additional proposed finding, EPA will hold a public meeting after the close of the public comment period in Washingotn, DC. Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554-1404 by July 7, 1989. Oral comments at this meeting will be limited solely to this additional finding and may not address any other aspect of the proposed rule. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, EPA will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

IV. Rulemaking record

EPA has established a record for this rulemaking (docket number OPTS-42094B). This record includes all information considered in the development of the proposed rule and appropriate **Federal Register** notices. EPA will continue to supplement the record with additional information as it is received.

The record includes all information referenced in support of the May 20, 1987 proposal and the following information:

References

(1) Notice of Proposed Rulemaking, Cyclohexane (52 FR 19096; May 20, 1987).

(2) USEPA. Engineering Assessment: Cyclohexane; Environmental Releases. Prepared by Pankaj Garg, Environmental Protection Agency, Office of Pesticides and Toxic Substances, Washington, DC (December 3, 1988).

(3) USEPA. Toxic Release Inventory System: Chemical Profile Report for Cyclohexane. Environmental Protection Agency, Office of Pesticides and Toxic Substances, Washington, DC (April 20, 1989).

V. Other Regulatory Requirements

EPA discussed Executive Order 12291, The Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the May 20, 1987, proposal; and no changes are indicated for this notice.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 30, 1989.

Dwain Winters,

Acting Director, Office of Toxic Substances.

[FR Doc. 89-13477 Filed 6-6-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. 106; Notice 1]

Transportation of Hydrogen Sulfide by Pipeline

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This notice requests information to determine the need for regulations to control the concentration of hydrogen sulfide (H_2S) in natural gas pipeline systems. There have been several instances in which H_2S has entered pipelines inadvertently. High concentrations may be extremely toxic if released and H_2S is detrimental to steel pipe.

DATES: Interested parties are invited to submit comments by September 5, 1989.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366-4583, regarding the subject matter of this document, or the Dockets Unit, (202) 366-5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Natural gas produced from some gas production wells has significant concentrations of toxic H_2S. This gas, commonly called "sour gas" is "sweetened" by removing the H_2S from the natural gas in treatment plants before the natural gas is introduced into the transmission pipelines. The Mary Ann Field in Mobile Bay in Alabama produces natural gas averaging 7½ percent or 75,000 parts per million (PPM) of H_2S.

At present, the federal gas pipeline safety regulations, 49 CFR Part 192, do not specifically address all the safety risks associated with the presence of H_2S in natural gas, such as those involving sulfide stress cracking and toxicity effects.

Hydrogen sulfide is a toxic, colorless, flammable gas which is poisonous, if inhaled, especially at concentrations in excess of 300 PPM (3/10 of 1 percent). Persons will lose consciousness after 5 minutes of breathing H_2S at concentrations of 100 PPM and death results very quickly thereafter.

Considerable research has been conducted to describe the effects of H_2S on the sulfide stress cracking of line pipe and to additionally describe the effects of stress corrosion cracking mechanisms in line pipe [1]. Research has shown a substantial increase in threshold stress (stress below which H_2S has no effect on sulfide stress cracking) with decreasing H_2S concentration [2]. For H_2S concentrations of 5 PPM or less there is no measurable effect on the sulfide stress cracking potential for high strength steel pipe. For high concentration of H_2S (>3,000 PPM) and applied stress levels above 70 percent of the yield stress, the time to failure decreases dramatically [2, 3].

Recent Incidents Reported by NTSB Involving Releases of H_2S Into Gas Pipeline Systems

California. One incident [4] arose on December 28, 1983, when the Pacific Offshore Pipeline Company's (POPCO) Las Flores Canyon Gas Treatment Plant was placed in service. Impurities, including H_2S, were to be removed from producing wells in the Santa Ynez Unit (an offshore field in the Santa Barbara Channel). The cleaned gas would be delivered by pipeline to the Las Flores Canyon Gas Treatment Plant where POPCO would then deliver it to the Southern California Gas Company (SCG) system for distribution to its natural gas customers.

Due to the failure of an automatic gas analyzer, gas was contaminated by 200 PPM of H_2S and entered the SCG distribution system. The analyzer was repaired following the interruption of gas flow. After the gas flow was re-initiated, further analysis indicated 16 PPM H_2S in the gas stream and flow was again stopped. The Occupational Safety and Health Administration (OSHA) regulations limit long term exposure levels of people to H_2S at 10 PPM. This introduction of H_2S into the SCG distribution system resulted in a notification of evacuation for over 20,000 people.

A second incident [4] involving H_2S entering the SCG system occurred on May 12, 1984, at the Wilmington, California, gas delivery point. Following this incident, the California Public Utilities Commission (PUC) requested that all SCG locations that could receive contaminated gas be equipped with automatic H_2S analyzers and shut-off equipment. The shut-off concentration would be set at between 4 PPM and 10 PPM.

As a result of these incidents in California, the California PUC has required that its previously determined upper limit be monitored by automatic equipment on a daily basis at gas supply points.

Texas. On August 11, 1987, automatic H_2S monitoring equipment at the KG Gas Processors, Limited, gas processing plant near Winters, Texas, indicated that an excessive amount of H_2S was entering the gas stream being delivered to Lone Star Gas Company [4]. The

supply was shut off and attempts to contact Lone Star personnel were initiated. Although no new contaminated gas was entering the Lone Star system, customer complaints were received triggering actions by Lone Star to analyze the gas. Gas company personnel found H_2S in concentrations of 1,600 PPM and greater and purged the entire system. The excessive concentrations of H_2S were not detected because automatic shut-off equipment at KG had failed to operate in response to the automatic monitor and Lone Star's monitoring equipment had been removed for repair at that time.

Incidents Reported in Canada

During a 25-year period, 22 instances have been reported [5] where workers at the Windfall sour gas field in Alberta, Canada, had been overcome by H_2S vapors emanating from tanks that were being filled by sour crude or gas condensates. Because H_2S is heavier than air, it will flow out of the top opening or vent line from tanks and in still air will accumulate in dangerous concentrations near ground level. Such an occurrence could be extremely hazardous if a pipeline carrying H_2S ruptured in a Class 3 or 4 location.

Recommendations by the National Transportation Safety Board (NTSB)

Current federal regulations in 49 CFR Part 192 do not require gas content and quality monitoring. Additionally, the RSPA gas incident reporting criteria (49 CFR 191.3) do not specifically require that events such as the preceding [4,5] be reported. Therefore, the full extent of the problems associated with H_2S in pipelines is not known. However, from its review of Lone Star's records, NTSB found that since 1977, 11 incidents involving the release of excessive quantities of H_2S into its pipeline system had occurred. In consideration of the potential for serious injury or death following the release of H_2S and resultant human exposure, the NTSB recommended that RSPA:

(1) Establish, based on known toxicological data, a maximum allowable concentration of hydrogen sulfide in natural gas pipeline systems, and amend 49 CFR Part 192 to reflect this determination. (Class II, Priority Action) (P–88–1)

(2) Revise 49 CFR Part 191 to require that pipeline operators report all incidents in which concentrations of hydrogen sulfide in excess of the maximum allowable concentration are introduced into pipeline systems that transport natural gas intended for domestic or commercial purposes. (Class III, Longer-Term Action) (P–88–2)

(3) Require gas pipeline operators to install on their systems equipment capable of automatically detecting and shutting off the flow of gas when the maximum allowable concentrations of hydrogen sulfide-contaminated gas are exceeded. (Class III, Longer-Term Action) (P–88–3)

Discussion

Generally speaking, operators of natural gas pipelines do not monitor gas quality at the custody transfer point. The producer is ordinarily contractually obligated to supply gas of a specified quality (moisture content, H_2S, elemental sulfur, BTU content, etc.). Gas quality monitoring is therefore the responsibility of the producer. At present, it is not clear how many operators monitor gas quality. In the case of the Las Flores Canyon Gas Treatment Plant supplying SCG, both producer and operator had gas monitoring and alarm systems.

H_2S poses risks to both health [6] and to the integrity of pipeline structures [1,2,3]. H_2S is a toxic, colorless, flammable gas which is poisonous if inhaled. It is considered to be immediately dangerous to life and health at concentrations of 300 PPM and at concentrations of 1,000 PPM it causes immediate unconsciousness and death. The OSHA has established an upper concentration level of l0 PPM for prolonged (8 hours) workplace exposure to H_2S.

The effects of H_2S on pipe metal depend to a large extent on pressure, steel chemistry, and duration of exposure [2,3]. Spontaneous cracking can be a problem even at low concentrations if the H_2S contamination is not eliminated. Conversely, if a high concentration (>3,000 PPM) of H_2S is accidentally introduced into a transmission or distribution system operating at, for example, 72 percent of specified minimum yield strength, failure could occur in as little as 10 hours.

The ratio of threshold stress (stress at which spontaneous cracking occurs) to yield stress is approximately 1.0 at an H_2S concentration of 100 PPM for API 5LX–65 pipe steel. However, for an H_2S concentration equal to or greater than 3,000 PPM, this ratio is about 0.7.

The time to failure for API 5LX–65 pipe steel is a very sensitive function of the applied stress to yield stress ratio from 100 percent of yield to about 70 percent of yield for a concentration of H_2S of 3,000 PPM. Below this level of applied stress, the time to failure increases dramatically from 10 to 20 hours to well beyond a thousand hours.

It has also been shown that high yield strength and high hardness (Rockwell C above 22) steels are more susceptible to sulfide stress cracking than lower strength steels.

Recent studies [7] have shown that the pH level of condensates in the pipeline may be more important than the exact hydrogen sulfide level. Sulfide stress cracking tends to be enhanced at lower pH levels, especially in the presence of CO_2.

In addition to sulfide stress cracking, hydrogen induced cracking or blistering can occur in the presence of H_2S. This type of cracking is sometimes referred to as stepwise cracking. Hydrogen induced cracking can occur in the absence of stress and it occurs in time periods as short as a few days from initial exposure.

Summary of Existing Regulations

1. Federal Regulations

49 CFR 192.125(d), Design of copper pipe

Copper pipe that does not have an internal corrosion resistant lining may not be used to carry gas that has an average hydrogen sulfide content of more than 0.3 grains per 100 standard cubic feet of gas.

49 CFR 192.475, Internal corrosion control: General

(a) Corrosive gas may not be transported by pipeline unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

* * * * *

(c) Gas containing more than 0.1 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

49 CFR 195.418, Internal corrosion control

(a) No operator may transport any hazardous liquid that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid on the system and has taken adequate steps to mitigate corrosion.

* * * * *

2. State Regulations

California General Order 58

At present California is seeking to establish a maximum allowable level of hydrogen sulfide in natural gas pipeline systems. The level to be proposed by General Order GO–58–A7 is set forth in Item 7, Purity of Gas, as follows:

(a) Hydrogen Sulfide. No gas supplied by any gas utility for domestic, commercial, or industrial purposes in

this state shall contain more than one-fourth (0.25) grain of hydrogen sulfide per one hundred (100) standard cubic feet.

(b) Total Sulfur. No gas supplied by any gas utility for domestic, commercial, or industrial purposes shall contain more than thirty (30) grains of total sulfur per one hundred (100) standard cubic feet.

(c) Test procedures used to determine the amounts of hydrogen sulfide and total sulfur shall be in accordance with accepted gas industry standards and practices.

Michigan Rule 299

The State of Michigan Department of Natural Resources, Geological Survey Division, Oil and Gas Operations, has a comprehensive set of regulations entitled "Hydrogen Sulfide Management." These regulations deal with definitions, set standards for equipment, establish duties of the well operator, define which wells are regulated, and define location of wells and processing equipment. In addition, the regulations establish training requirements of personnel, contingency plans for drilling, drilling operations, and briefing areas.

In addition, Michigan has a detailed H_2S Rules Supplement which further defines which class of well and associated gathering lines is affected by a particular rule or section of the rule.

Michigan Rule 460

The Michigan Department of Commerce, Public Service Commission, has established Rule 460, "Technical Standards for Gas Service." Rule R460.2381 deals with gas purity.

Michigan Rule 81 (R460.2381)

(1) Gas distributed by utilities to customers shall not contain more than 0.3 grains of hydrogen sulfide or more than 20 grains of total sulfur per 100 cubic feet (about 10 PPM), including the sulfur in any hydrogen sulfides.

(2) Gas distributed by utilities to customers shall not contain flammable liquids in quantities that interfere with the normal operation of customer's equipment.

Texas Rule 36

The Railroad Commission of Texas has adopted various versions to Rule 36 entitled "Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas," (revised September 15, 1985).

Rule 36 contains general provisions for determining the hydrogen sulfide concentration in the gaseous mixture in an operations or system. It explains how to determine the radius of exposure in terms of concentration as a function of distance from the source. Storage tanks, warning markers, security, materials, and equipment selection requirements are all covered in the general provisions section.

The rule additionally provides guidance and regulations for contingency and emergency preparedness. The rule provides a framework for appropriate field operations, including inspection, drilling, training of personnel, accident notification, reporting requirements, and new well completion reporting of H_2S concentration levels.

3. Canadian Regulations

The Canadian Standard Z184–1975, "Gas Pipeline Systems," contains a number of provisions pertaining to sour gas service. Section 3.4 is entitled "Requirements for Sour Gas Service." This section sets forth special service requirements for piping and all components in contact with sour gas.

Section 4.10, "Inspection and Testing of Production Welds," includes a subsection 4.10.2.1.4 which requires that all welds in a sour gas system shall be radiographically inspected for 100 percent of the circumference.

Section 4.11.3.3 requires that there be *no* area of inadequate penetration or incomplete fusion between the root bead and pipe metal on welds in sour gas systems.

Section 4.11.4.4, "Welds in Sour Gas Systems." This section requires that welds be free of unrepaired burn-through.

Section 4.11.8.4 requires that there be no undercutting adjacent to the root bead on welds in sour gas systems.

Section 6.4.8.1.2 permits testing with sour gas only in remote Class 1 locations when other test media are not available.

Section 6.4.5.1(c)—suitable measures shall be taken to prevent failures due to such mechanisms as metal loss corrosion, hydrogen embrittlement, stress corrosion cracking and hydrogen blistering [in sour gas systems], and provisions shall be made for monitoring stations to assess internal corrosion.

Request for Information

Since RSPA has no regulations regarding maximum H_2S concentration in gas pipeline systems (other than gas holders and copper pipeline), RSPA would like to have additional information to appropriately assess the need for establishing such regulations.

To assist RSPA in evaluating the need for additional regulations, interested parties are invited to answer the following questions and submit relevant information including any accident experience (if applicable) associated with H_2S release(s).

(1) What factors should be considered in determining the need for a maximum allowable concentration of hydrogen sulfide in natural gas pipeline systems? What should this concentration be?

(2) Describe events you know of in which hydrogen sulfide has been released from, or into, a pipeline in dangerous amounts and what were the H_2S concentrations? What were the consequences of such releases? What would be the burden associated with mandatory reporting of such events?

(3) If you are an operator receiving gas from a producer, do you have automatic H_2S detection and shut-off equipment? Do these devices operate reliably? For such operators that do not have this equipment, what costs and other burdens can be associated with requiring use of the equipment?

(4) Which pipelines transporting sour gas should be subject to an H_2S monitoring requirement? Should rural gas gathering lines be subject to H_2S monitoring requirements, even though they are not now subject to any of the Part 192 safety standards?

Commenters are not limited to filing comments only on the questions presented above and may submit any facts and views consistent with the intent of this advance notice. In addition, commenters are encouraged to provide comments on (1) "major rule" considerations under the terms of Executive Order 12291; (2) "significant rule considerations" under the terms of DOT regulatory procedures (44 FR 11634); (3) potential environmental impacts subject to the National Environmental Policy Act; (4) information collection burdens that must be reviewed under the Paperwork Reduction Act; (5) the economic impact on small entities under the Regulatory Flexibility Act; and (6) impacts on Federalism under Executive Order 12612.

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53; Appendix A of Part 1, and App. A of Part 106.

Issued in Washington, DC, on June 1, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

References

[1] Williams, D.N., "Examination of the BP Test for Measuring the Resistance of Pipe Steels to Blistering and Internal Cracking When Exposed to Sour Gas," Battelle Columbus Labs for the American Gas Association, 1980.

[2] Watkins, M., and Vaughn, G.A., "Effects of H_2S Partial Pressure on the Sulfide Stress

Cracking Resistance of Steel," Materials Performance, Vol. 25, No. 1, 1986.

[3] Mayville, R.A., and Warren, T.J., "The Effect of H_2S Concentration on the Sulfide Stress Cracking Resistance of an X-65 Pipeline Steel," Ref. Paper 55746, Arthur D. Little, Cambridge, Massachusetts, June 1988.

[4] Burnett, James, Safety Recommendations P-88-1, P-88-2, and P-88-3, Transportation of H_2S by Pipeline, May 10, 1988, National Transportation Safety Board.

[5] Wichert, Edward, "Sour Gas Field Reflects Equipment, Operating Improvements," Oil and Gas Journal, Technology, April 25, 1988.

[6] Anon., "Occupational Health Guideline for Hydrogen Sulfide," Occupational Safety and Health Administration, 1978.

[7] Mayville, R.A., and Warren, T.J., "Chevron Point Arguello Pipeline System," Ref. Paper 61786-02, Arthur D. Little, Cambridge, Massachusetts, July 1988.

[FR Doc. 89-13409 Filed 6-6-89; 8:45 am]
BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1160, 1162, and 1168

[Ex Parte No. 55 (Sub-No. 69)]

Rules Governing Applications for Operating Authority; Revision of Form OP-1

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of time to file comments.

SUMMARY: The deadline for filing comments in response to the notice of proposed rulemaking in this proceeding (54 FR 20879, May 15, 1989) concerning applications for operating authority, revision of form OP-1 has been extended.

DATE: Comments are due June 28, 1989.

ADDRESSES: Send comments [an original and 10 copies] referring to Ex Parte No. 55 (Sub-No. 69) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Suzanne Higgins O'Malley, (202) 275-7292

Richard B. Felder, (202) 275-7691. (TDD for hearing impaired (202) 275-1721)

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13506 Filed 6-6-89; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 54, No. 108
Wednesday, June 7, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Citizens' Advisory Committee on Equal Opportunity; Re-Establishment

Notice is hereby given that the Secretary of Agriculture intends to re-establish the Citizens' Advisory Committee on Equal Opportunity.

The purpose of the Committee is to strengthen the Department's efforts in the area of Civil Rights. The Committee will advise the Secretary and other Officials of the Department on all aspects of the Department's policies, practices, and procedures which promote equal opportunity.

The re-establishment of this Committee is in the public interest in connection with the performance of duties and responsibilities of the Department.

Written comments on the proposed re-establishment of the Committee may be sent to Naomi Churchill, Esq., Acting Director, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 102–W Administration Building, Washington, DC 20250, 10 days after publication in the **Federal Register.**

John J. Franke, Jr.,

Assistant Secretary for Administraiton.

June 1, 1989.

[FR Doc. 89–13447 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–94–M

Meeting of the Citizens' Advisory Committee on Equal Opportunity

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: June 19–21, 1989.

Place: The Warwick Hotel, 1776 Grant Street, Denver, Colorado 80203.

Time: 8:30 a.m.–5:00 p.m.

Purpose: Advise the Secretary on the effectiveness of program directives that are designed to achieve compliance; review all aspects of the Department's policies, practices, and procedures which promote equal opportunity; recommend changes in Department rules, regulations, and orders to assure that Departmental activities are free from discrimination based on race, color, sex, religion, national origin, age, marital status, and handicap; additionally, the Committee will focus on problems and issues affecting the elderly, Native Americans, and Small Scale Agriculture in USDA programs.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: William C. Payne, Jr., Deputy Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 1226 South Building, Washington, DC 20250, (202) 447–5681, TTD (202) 382–1130.

Written statements may be submitted until July 7, 1989.

Dana A. Froe,

Acting Deputy Associate Director, Equal Opportunity.

June 1, 1989.

[FR Doc. 89–13448 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–94–M

Animal and Plant Health Inspection Service

[Docket No. 89–086]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to the Khapra Beetle Eradication Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service analyzing the potential environmental effects of the eradication of khapra beetle infestations from structures and conveyances. Based on the assessment, we have determined that no significant adverse effect on the environment will result from implementation of the selected alternative. Therefore, we will not prepare an environmental impact statement for this program.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained from Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The environmental assessment is available for public inspection at the above address. Hours for inspection are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION:

Background

The khapra beetle (*Trogoderma granarium* Everts) is a plant pest that damages grain and cereal products, seeds, cottonseed meal, nut meats, dried fruits, and other products. The pest can cause serious damage to stored plant products. When infested plant products are left undisturbed in storage for long periods of time, total loss can be expected. This insect is a threat to billions of bushels of impotant stored plant products in the United States.

The khapra beetle eradication program has the following primary goals: (1) To eradicate infestations of khapra beetle from structures and conveyances in a prompt, efficacious and environmentally-sound manner; (2) to prevent the spread of the khapra beetle to other uninfested areas in the United States; and (3) to maintain the khapra beetle-free status of the United States.

The following alternatives were considered in selecting the recommended course of action:

(1) No action,
(2) Methyl bromide fumigation,
(3) Malathion surface treatment, and
(4) Integrated control.

The environmental assessment anaylyzed the alternatives with respect to program efficacy, potential environmental consequences, and cumulative effects. Program operational procedures and mitigative measures were also considered with respect to their ability to minimize environmental consequences. The preferred alternative, integrated control, will employ the component chemical alternatives, methyl bromide fumigation and/or malathion surface treatment, for structures and conveyances.

This khapra beetle eradication program will use treatment procedures within extremely restricted areas, such as warehouses, silos, ships, and containers. Only a few treatments, approximately five to ten, would be required in an average year.

After considering the effects of implementing the selected alternative, we have concluded there will be no primary or secondary effects on the human environment as a result of the program, and that no adverse effects are foreseen. We have also considered cumulative impacts, and anticipate that the program will have a beneficial effect on the environment through the coordination and planned reduction of current pesticide use.

In the environmental assessment, we evaluated the uniqueness or rareness of resources being affected and concluded that the selected alternative will not have an effect on the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of the habitats of those species.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1978, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–13469 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 89-092]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing of genetically engineered soybean plants in Whiteville, Tennessee. The soybean plants express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–034–15.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The field trial is to take place in Whiteville, Tennessee.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase gene itself, nor its gene product, confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed soybean plants with any measurable selective advantage over nontransformed soybean plants in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvyl-3-phosphoshikimate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 1 acre) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done at Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–13470 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 89–091]

Availability of Environmental Assessment and Finding of No Signficant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing of genetically engineered soybean plants in Jersey County, Illinois. The soybean plants express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerance to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introuction or dissemination of a plant pest and will not have any signficant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the enviromental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the enviornmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The enviromental assessment should be requested under accession number 89–034–11.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to be believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plan Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an enviromental impact statement before issuing a permit for the release into the enviornment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvyl-3 phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The field trial is to take place in Jersey County, Illinois.

In the course of reviewing the permit application, APHIS assessed the impact on the environmental of releasing the soybean plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environement.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provided the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature,

chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl–3–phosposhikimate synthase gene itself, nor its gene product, confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed soybean plants with any measureable selective advantage over nontransformed soybean plants in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvyl-3-phosphoshikimate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 2 acres) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51274, August 31, 1979).

Done at Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13471 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

1989-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice sets forth the final determinations with respect to the level of price support, the adjustments to the loan rate, and the lower loan repayment provisions for the honey price support program for the 1989 crop of honey. These determinations are made pursuant to section 201(b) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: This notice of determinations is effective for the 1989 crop of honey.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA, Room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7601. The Final Regulatory Impact Analysis describing the actions taken in this notice of final determinations and their impact is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determinations has been made under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not-major." It has been determined that these determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program to which these determinations apply are: commodity loans and purchases; 10.051, as found in the catalog of federal domestic assistance.

It has been determined that the regulatory flexibility act is not applicable to this notice of final determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

It has been determined by an enviromental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 2015, Subpart V, published at 47 FR 29115 (June 24, 1983).

Section 201(b) of the Agricultural Act of 1949 (1949 Act), as amended, provides that the price support level for the 1989 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b) of the 1949 Act by adding subparagraph D which requires that, once the support level has been determined using the above method, the rate for the 1989 crop must be reduced by 0.5 cents.

The price support loan rate for the 1988 crop of honey was 59.85 cents per pound prior to being reduced in accordance with subparagraph D of the 1949 Act. This amount, when reduced by 5 percent, equals 56.86 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 50.46 cents per pound. Therefore, since the established loan rate (56.86 cents per pound) is in excess of the simple average price received by producers, 56.86 cents per pound is reduced by 0.5 cents per pound, resulting in a price support loan rate for 1989-crop honey of 56.36 cents per pound.

In accordance with section 403 of the 1949 Act, the loan rate for the 1989 crop

of honey may be adjusted to reflect floral source, color, class, grade, and other market differentials, such as location, which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act, the Secretary may permit producers who have obtained price support loans with respect to the 1986–1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

This option of permitting repayment of loans at a rate less than the original loan rate has come to be known as the lower loan repayment (LLR) option. The lower repayment rates are known as LLR rates or levels.

Accordingly, on February 13, 1989, a notice of proposed determinations was published in the **Federal Register** (54 FR 6555) requesting comments concerning the conduct of the price support program for honey through the use only of loans and not purchase agreements, providing adjustments to the loan rate based on color, class, grade, and other market differentials, such as location, and permitting repayment of such loans at the lesser of the loan level for such crop or at a level determined by the Secretary or his designee.

Discussion of Comments

Fifty-one written comments were received in response to the notice of proposed determinations: 30 from producers, 9 from producer/packers, 7 from trade organizations, 3 from exporters/importers, and 2 from packers.

All respondents, who had an opinion, favored the honey price support program. No commenter opposed the program. Ten commenters wanted a different loan rate from the established national average. The national average loan rate is legislatively set and cannot be changed administratively.

A wide range of comments were received regarding adjustments to the national average loan rate. Eleven respondents favored the same adjustments as were in place for the 1988 program. Sixteen commenters opposed the use of floral source as an adjustment mainly because the commenters felt that most honey was bought and sold by color. A floral source distinction is in the best interests of CCC because it is the main determinant of flavor. CCC attempts to blend flavors to suit taste preferences in various regions of the country for the purpose of school lunch and other donation programs.

Six respondents specifically requested that the "nontable" classification be eliminated. Nontable grade honey includes floral sources which are accepted for table use in areas where they are produced, but are not generally accepted nationally. The respondents opined that rating floral sources for taste preference and saleability is arbitrary. Nontable class honey has been supported at the same loan rate as amber honey because nontable honey could conceivably be used in CCC donation programs in areas where the honey is produced and accepted for table us. However, the overwhelming majority of nontable honey forfeitures cannot be used in the donation program and are sold on a bid basis at prices below the loan or LLR rate. (The "nontable" class would automatically disappear if floral source were no longer used to adjust honey loan rates because floral source determines honey class.)

Fifteen respondents opposed adjusting the loan rate according to location. Setting differentials by location would be a difficult, highly subjective task, because there is no central marketing point for honey and marketing patterns are hard to define.

Forty-seven commenters favored continuing the LLR option permitting loan repayments at levels lower than the established loan rates. Also, there were comments regarding the LLR levels. Two commenters favored locational differentials on the LLR levels while six commenters opposed such differentials. Three commenters wanted the differential between the loan and LLR rates to be the same for all colors and/or classes of honey. They felt this would result in all colors and classes of honey being treated fairly. Two respondents recommended "stable" LLR rates while three favored lower rates and four requested that the rates "not be reduced." The LLR rates are adjusted when market conditions and conditions in the honey loan program warrant changes. In order to achieve the 4 goals of the LLR option, repayment levels are set to approximate market prices. These market relationships are reflected in the adjusted loan rates which were determined by adding the difference between the weighted average of the current LLR rates and the national average loan rate to the current LLR rate for each color and class of honey.

After taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the price of honey for the 1986 through 1990 crop years, the following final determinations are made with respect to the honey price support program for the 1989 crop:

Final Determinations

(a) The 1989-crop honey price support program will be a loan program with a loan rate of 56.36 cents per pound.

(b) The 1989-crop honey loan rate has been adjusted to reflect floral source, color, and class. However, the loan rate for the "nontable" class of honey will no longer be identical to the rate for table class amber honey, but will be designated separately and carry a loan rate less than table class amber. White honey will be supported at 57.93 cents per pound; extra light amber, 54.93 cents per pound; light amber, 53.93 cents per pound; amber, 52.93 cents per pound, and nontable honey, 50.93 cents per pound. The adjusted loan rates reflect current market relationships between the colors and classes of honey.

(c) Producers with price support loans for 1989-crop honey will be permitted to repay such loans at the lesser of the loan levels for such crop or at levels which the Secretary or a designee shall determine. The repayment levels shall be levels which will (1) minimize the number of loan forfeitures, (2) not result in excessive total stocks of honey, (3) reduce the costs incurred by the Federal Government in storing honey, and (4) maintain the competitiveness of honey in domestic and export markets.

The Secretary, or a designee, shall publicly announce the repayment levels for each color and class of honey on a weekly basis. Interest shall not be assessed on price support loans which are repaid at the lower repayment level announced by the Secretary or his designee.

Honey pledged as collateral for a price support loan which is redeemed at the lower repayment level shall not be eligible to be pledged as collateral for a new price support loan.

Signed at Washington, DC on June 1, 1989.

Keith D. Bjerke,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–13437 Filed 6–6–89; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Department of Commerce, Bureau of Export Administration.
ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby solicits public comments on a request for special issue licenses under Article 8 of the U.S.-Japan machine tool voluntary restraint agreement.

DATE: Comments must be submitted no later than June 19, 1989.

ADDRESS: Send all comments to John A. Richards; Deputy Assistant Secretary for Industrial Resource Administration; Room H3878; U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward Levy; Section 232 Program Manager; Department of Commerce; Room H3878, U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses when it is determined "that there is a need for the importation into the USA of arrangement products in excess of the (VRA) export limit." Generally, the Department of Commerce is prepared to grant such requests (1) when the machine in question meets a unique national security need, (2) when the machine will directly support an increase in U.S. machine tool manufacturing capacity, or (3) when a customer can demonstrate that a comparable tool cannot be obtained from domestic or available foreign supplies. Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for special issue licenses to import 20 numerically controlled milling/turning centers from Japan over the third and fourth quarter of 1989. The machines meet the following specifications: 20 HP AC main spindle drive (60–6000 RPM) providing 6 axis CNC combination milling and turning with 1⅝" bar and 5" chuck capacity, main spindle provides full contouring (C axis) capability. The machines are configured with 2 independent turrets (12 tool capacity each) for 4 axis simultaneous machining or indexing. Each of the independent turrets has six 2 HP AC power driven tool stations with direct RPM programming (250–5000 RPM). The axis travel range for turret one is Z-axis 250 mm and X-axis 145 mm. The axis travel range for turret two is Z-axis 150 mm and X-axis 100 mm. The machine includes a rear work station with 3 HP AC sub-spindle (B-axis) with direct RPM programming (150–5000 RPM). The B-axis provides 500 mm movement in the Z-axis. Integral with the number two turret face are four power tool positions with direct RPM programming for the rear work station. All rapid traverse rates are 600 IPM.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than (ten days after publication).

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Bureau of Export Administration's Office of Security and Management Support, Room 4886 at the above address; telephone (202) 377–2593.

James M. Lemunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–13416 Filed 6–6–89; 8:45 am]
BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 433]

Resolution and Order Approving With Restriction the Application of Georgia Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the Yamaha Motor Manufacturing Corp., Golf Cart and Water Vehicle Plant in Coweta County, GA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order.

The Board, having considered the matter, hereby orders:

After consideration of the application of the Georgia Foreign-Trade Zone, Inc., filed with the Foreign-Trade Zones Board (the Board) on November 17, 1987, requesting special-purpose subzone status at the golf cart and water vehicle manufacturing plant of Yamaha Motor Manufacturing Corporation of America in Coweta County, Georgia, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were given subject to a restriction requiring privileged foreign status on all foreign merchandise admitted to the subzone for the manufacture of golf carts, beginning two years from the date of subzone activation, approves the application subject to the foregoing restriction.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Coweta County, Georgia

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, has made application (filed November 17, 1987, FTZ Docket 35–87, 52 FR 45474) in due and proper form to the Board for authority to establish a special-purpose subzone at the golf cart and water vehicle manufacturing plant of Yamaha Motor Manufacturing Corporation of America (YMMC), located in Coweta County, Georgia, adjacent to the Atlanta Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be hard; and

Whereas, The Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given

subject to the restriction in the resolution accompanying this action, which limits full authority on golf cart activity to a two-year period;

Now, Therefore, in accordance with the application filed November 17, 1987, the Board hereby authorizes the establishment of a subzone at YMMC's Coweta County, Georgia, plant, designated on the records of the Board as Foreign-Trade Subzone No. 26D at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed an its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 31st day of May 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce, for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-13428 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[Application No. 89-00006]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Sun International Trading, Ltd. (SITL). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All products.

Services

All services.

Export Trade Facilitation Services (as they relate to the export of Products and Services)

All Export Trade Facilitation Services, including consulting; international market research; financing; export licensing; warehousing; shipping; transportation; taking title to goods; arranging for after-sales product servicing; providing information on the mechanics of exporting and on duties and other fees applicable to exporters; and providing information and training concerning quality control, advertising, and distribution.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in addition to applicant)

Sun Brokers, Inc. and Sun Galleries, Limited, both of Wilmington, North Carolina.

Export Trade Activities and Methods of Operation

SITL and/or any of its Members may:

1. Enter into exclusive and/or nonexclusive agreements with Suppliers individually to act as the Supplier's Export Intermediary, whereby SITL and/or any of its Members may agree to:

a. Provide Export Trade Facilitation Services,

b. Act as licensee or licensing agent for the sale of Products and Services in Export Markets, and/or

c. Act as the Supplier's agent to identify and appoint exclusive and/or nonexclusive Export Intermediaries to deal in the Supplier's Products and Services in Export Markets;

2. Enter into exclusive and/or nonexclusive agreements with individual foreign buyers to act as a purchasing agent in any Export Market with respect to particular transactions for the individual buyers;

3. Enter into exclusive and/or nonexclusive agreements with individual end-users of Products and Services located in any Export Market under which such end-users may agree to purchase all or part of their requirements of Products and Services from or through SITL and/or any of its Members;

4. Enter into agreements mentioned in items 1 through 3 above that contain terrritorial, customer, price, and/or quantity or quality restrictions in the Export Markets;

5. Respond, as they become aware of invitations to bid or sales opportunities existing in the Export Markets, by:

a. Contacting individual Suppliers of the Products and Services listed in the invitation to bid,

b. Inviting the Suppliers to provide independent price quotations for the Products and Services, and/or

c. Entering into agreements with Suppliers individually whereby SITL and/or any of its Members will submit a response to the bid invitation or request for quotation.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: June 1, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-13417 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-DR-M

Applications; for Duty-Free Entry of Scientific Instruments; University of Nevada-Reno et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-152. *Applicant:* University of Nevada-Reno, Department of Mining, Reno, NV 89557-0047. *Instrument:* Single Cylinder Engine Test Bed. *Manufacturer:* G. Cussons, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the training of professional mining engineers in Mine Plant Design and Mine Environmental Control courses.

Application Received by Commissioner of Customs: May 10, 1989.

Docket Number: 89-153. *Applicant:* New York University Medical Center, 550 First Avenue, New York, NY 10016. *Instrument:* Electron Microscope, Model JEM-1200/EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for the study of the ultrastructure of animal cells and viruses during experiments concerned with:

(1) Polarization of epithelial cells,

(2) Biogenesis of cellular organelles, in particular rough endoplasmic reticulum, lysosomes, plasma membranes and secretory granules,

(3) Morphological studies of respiratory epithelia

(4) EM crystallographic studies of Na,K,-ATPase and other membrane proteins.

The instrument will also be used on a one-to-one basis in the training of medical and graduate students in the courses Cellular and Molecular Biology and Histology.

Application Received by Commissioner of Customs: May 11, 1989.

Docket Number: 89-154. *Applicant:* Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425. *Instrument:* Imaging Photon Detector *Manufacturer:* Instrument Technology Limited, United Kingdom. *Intended Use:* The instrument will be used for studies of spinal cord injuries in order to obtain a better understanding of calcium sensitive processes.

Application Received by Commissioner of Customs: May 11, 1989.

Docket Number: 89-155. *Applicant:* Virginia Military Institute, Route 11, Lexington, VA 24450. *Instrument:* Ground Contactivity Electromagnetic Meter, Model EM-31DL. *Manufacturer:* Geonics Limited, Canada. *Intended Use:* The instrument will be used for educational purposes in the course Engineering Geology with the objective of allowing students to understand and become familiar with geophysical instruments.

Application Received by Commissioner of Customs: May 11, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-13426 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 90520-9120]

[RIN No. 0693-AA65]

Proposed Federal Information Processing Standard (FIPS) for the User Interface Component of the Applications Portability Profile

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: This proposed Federal Information Processing Standard (FIPS) will adopt the X Protocol, Xlib Interface, XT Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 3 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)). This proposed standard is for use by computing professionals involved in system and application software development and implementation. This proposed standard is part of a series of specifications needed for application portability. The Appendix contains a reference model for network-based bit-mapped graphic user interface standards.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain the specifications in machine-readable form from: D. Richard Kuhn, Technology Building, Room B266, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337, FAX (301) 948-1784.

DATE: Comments on this proposed FIPS must be received on or before September 5, 1989.

ADDRESS: Written comments concerning the proposed FIOS should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed FIPS for User Interface Component of APP, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street Between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. D. Richard Kuhn, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337.

Dated: May 31, 1989.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standards Publication

(date)

Announcing the Standard for the User Interface Component of the Applications Portability Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100–235.

Name of Standards. The User Interface Component of the Applications Portability Profile.

Category of Standard. Software Standard, Application Program Interface.

Explanation. This publication announces the adoption of the X Protocol, Xlib, Interface, Xt Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 3 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)) as a Federal Information Processing Standard. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is part of a series of specifications needed for application portability. The Appendix to this standard contains a reference model for network-based bit-mapped graphic user interface standards. This standard covers the Data Stream Encoding, Data Stream Interface, and Subroutine Foundation layers of the reference model. It is the intention of NIST to provide standards for other layers of the reference model as consensus develops within industry. This standard addresses the user interface functional area of the Applications Portability Profile that was announced in FIPS 151, POSIX: Portable Operating System Interface for Computer Environments.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), National Computer Systems Laboratory.

Cross Index. The X Window System, Version 11, Release 3.

Related Documents.

a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

b. Draft Proposed American National Standard X3J11/87–140, "Programming Language C".

c. FIPS 151, POSIX: Portable Operating System Interface for Computer Environments.

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff in porting computer programs to defferent vendor systems and architectures.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

f. To provide ease of use in computer systems through network-based bit-mapped graphic user interfaces with a consistent appearance. Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS shall be used for network-based bit-mapped graphic systems that are either developed or acquired for government use where distributed/networked bit-mapped graphic interfaces to multi-user computer systems are required.

Specifications. The specifications for this FIPS are the following documents from the X Window System, Version 11, Release 3. These specifications define a C language source code level interface to a network-based bit-mapped graphic system. The computer program source code contained in Version 11, Release 3 is not part of the specifications for this FIPS. The specifications for this FIPS are the following documents from X Version 11, Release 3:

a. X Window System Protocol, X Version 11,

b. Xlib—C language X Interface,

c. X Toolkit Intrinsics—C Language Interface,

d. Bitmap Distribution Format 2.1.

Implementation. This standard is effective *6 months after date of publication in the Federal Register.* The other elements identified in the Appendix should be considered in planning for future procurements.

a. *Acquisition of a Conforming System.* Organizations developing network-based bit-mapped graphic system applications which are to be acquired for Federal use after the effective date of this standard and which have applications portability as a requirement should consider the use of this FIPS. Conformance to this FIPS should be considered whether the network-based bit-mapped graphic system applications are:

1. Developed internally,

2. Acquired as part of an ADP system procurement,

3. Acquired by separate procurement,

4. Used under an ADP leasing arrangement, or

5. Specified for use in contracts for programming services.

b. *Interpretation of the FIPS for the User Interface Component of the Applications Portability Profile.* NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, National Computer Systems Laboratory, Attn: APP User Interface Component FIPS, Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. *Validation of Conforming Systems.* The X Testing Consortium has developed a validation suite for measuring conformance to this standard. NIST is considering the use of the X Testing Consortium validation suite as the basis for an NIST validation suite for measuring conformance to this standard.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on

which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the Agency.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Massachusetts Institute of Technology and Digital Equipment Corporation.) When ordering, refer to Federal Information Processing Standards Publication—(FIPSPUB—), and title. Payment may be made by check, money order, or deposit account.

Appendix

The FIPS for User Interface is part of a series of FIPS for the Applications Portability Profile (APP), first announced in FIPS 151 (POSIX). The functional components of the APP constitute a "toolbox" of standard elements that can be used to develop and maintain portable applications. The APP is an open systems architecture based upon non-proprietary standards.

One of the most neglected aspects of applications software portability is the requirements to maintain a consistent user interface across all systems on which the application resides. The FIPS for User Interface is the first step in responding to a critical need within the Federal community for a set of tools to develop standard user interfaces. It is the first in a series which we intend to adopt as user interface technology progresses and consensus emerges.

This initial FIPS is based upon the X Window System developed by the Massachusetts Institute of Technology (MIT) X Consortium. The X Window System assumes a client/server model of distributed computing, and user interface applications based upon bit-mapped graphic displays. With this sytem, software vendors can develop applications that incorporate such interfaces without being concerned about the underlying display hardware on which the application runs. In addition, the application need not be resident on the same computer system as the one to which the user's display is attached.

This FIPS is not intended to specify a government-wide style or "look and feel", nor is it intended as a specification of a general programming interface for graphics applications. It is intended to lay a foundation for standards that will help Federal agencies develop and acquire network-based, bit-mapped graphic user interface applications.

The X Window System program services and interface specifications adopted by this FIPS provide the foundation for a set of vendor independent building blocks that can be used to develop user interface applications. These specifications, however, must be extended to provide the additional program services and interface specifications for user interface applications. These additional specification will be based on the NIST User Interface reference model shown in Figure 1.

The NIST User Interface reference model is a layered model which defines the program services and interfaces required for network-based, bit-mapped graphic user interface applications. This FIPS covers the Data Stream Encoding, Data Stream Interface and Subroutine Foundation layers of the framework. These layers provide a foundation upon which standard components for higher layers of the framework may be built.

NIST User Interface Reference Model

Model layer	System component
6. Application	Application.
5. Dialogue	UIL, UIMS.
4. Presentation	UIL, UIMS.
3. Toolkit	Toolkit.
2. Subroutine foundation	Xt intrinsics.
1. Data system interface	Xlib.
0. Data stream encoding	X protocol.

Figure 1.

Layer 0: Data Stream Encoding

Data Stream Encoding defines the format and sequencing of byte streams passed between client and server. In the X Window System, the Data Stream Encoding is the X "wire" or "network" protocol. As a specification of message formats, the Data Stream Encoding is indepenent of operating system, programming language, or network communication.

Layer 1: Data Stream Interface

The Data Stream Interface specifies a function call interface to build the messages defined in the Data Stream Encoding layer. In X, this interface is the Xlib function library. The Data Stream Interface converts parameters passed from a program into the bit stream that is transmitted over the network, and converts messages from the server into values passed to the program. The Data Stream Interface provides access to basic graphic functions from Layer 0, and may support system functions such as error handling and syncronization.

Layer 2: Subroutine Foundation

The Subroutine Foundation uses features of the Data Stream Interface to provide the means to build components of window interfaces such as scroll bars. Functions often provided by the Subroutine Foundation include initialization and destruction of objects, management of events and object hierarchy, and the saving and restoration of interface state. The Subroutine Foundation can be thought of as a toolkit with which to build toolkits. The X Windown System's Xt Intrinsics set is a Subroutine Foundation for X.

Layer 3: Toolkit

Components such as menus, pushbuttons, scroll bars, or help boxes can be used to build an application interface. These "prefabricated" components make up the Toolkit. The components of Toolkits vary with vendors, but they typically contain most of the common user interface elements.

Layer 4: Presentation

The Presentation layer determines the appearance of the user interface, including aspects such as size, style, and color. It specifies how the components in the Toolkit should be composed to create windows. The appearance may be specified using a User Interface Language (UIL) and may be enforced by a window manager, which controls the size and location of windows, and decorates windows in the style specified by the user. For example, an application program will provide text for a title bar, but the window manager determines the appearance of the title bar.

Layer 5: Dialogue

The Dialogue layer coordinates the interaction between the computer system and the user. It can be thought of as a mediator between the user and the applicaiton program. Communication between user and application program is through the Dialogue layer, which may be implemented by a User Interface Management System (UIMS). The user/application interaction is specified by a "dialogue" that associates user actions, such as clicking on a menu item, with application actions. Some UIMS tools can accept a dialogue and a presentation style from which to generate an instance of the UIMS that controls the interaction between user and application.

Layer 6: Application

The application program implements the functions required by the user. Its interaction with the user is through the Dialogue layer.

Plans

The FIPS for User Interface is an integral component of the APP. As with other components of the APP, the specifications adopted by this FIPS are expected to evolve as the technology matures, as additional experience using the technology is gained, and as consensus broadens in the national and international standards arena. NIST has established a process to ensure that the FIPS will evolve in a manner that serves the interests of both users who employ these specifications to acquire products and vendors who use them to build products.

Both users and vendors are included in this process through an ongoing series of APP User Workshops and APP Implementor Workshops. The user workshops provide information on the evolving definition of the User Interface component as well as other APP specifications. They also serve as a forum for users to identify user priorities and to provide input and feedback. The implementor workshops provide a forum for vendors to discuss the APP specifications and to provide feedback on the technical merits of the NIST proposals. The implementor workshops are designed to ensure that there is consensus on the part of the vendors to building products to the evolving APP specifications.

[1] Scheifler, R.W., and J. Gettys, "the X Window System," *ACM Transactions on Graphic*, Vol. 5, No. 2, April, 1986.

[FR Doc. 89-13411 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 90521-9121]

[RIN No. 0693-AA70]

Proposed Federal Information Processing Standard (FIPS) for Posix Shell and Tools: Shell and Application Utility Interface for Computer Operating System Environments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: This proposed Federal Information Processing Standard (FIPS) will adopt Draft 8 of the Institute of Electrical and Electronics Engineers (IEEE) Standard for Shell and Application Utility Interface for Computer Operating System Environments (IEEE 1003.2/POSIX Shell and Tools) on an interim basis. IEEE 1003.2/Draft 8 defines a command language interpreter and a set of utility programs. It is for use by computing professionals involved in system and application software development and implementation is part of a series of specifications needed for application portability. This proposed standard addresses the operating systems functional areas of the Applications Portability Profile that was announced in FIPS 151, POSIX.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the technical specifications (IEEE 1003.2/Draft 8) from the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331, telephone 1-800-678-4333.

DATE: Comments on this proposed FIPS must be received on or before September 5, 1989.

ADDRESS: Written comments concerning the revision should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed FIPS for POSIX Shell and Tools, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. D. Richard Kuhn, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337.

Date: May 31, 1989.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standards Publication

(date)

Announcing the Standard for POSIX Shell and Tools; Shell and Application Utility Interface for Computer Operating System Environments

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

Name of Standard. POSIX Shell and Tools: Shell and Application Utility Interface for Computer Operating System Environments

Category of Standard. Software Standard, Operating Systems.

Explanation. This publication announces the adoption of Draft 8 of the Institute of Electrical and Electronics Engineers (IEEE) Standard for Shell and Application Utility Interface for Computer. Operating System Environments (IEEE 1003.2/POSIX Shell and Tools) as a Federal Information Processing Standard (FIPS) on an interim basis. IEEE 1003.2/Draft 8 defines a command language interpreter and a set of utility programs. It is for use by computing professionals involved in system and application software development and implementation and is part of a series of specifications needed for application portability. This standard addresses the operating systems functional area of the Applications Portability Profile that was announced in FIPS 151, POSIX.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), National Computer Systems Laboratory.

Cross Index. The Institute of Electrical and Electronics Engineers Standard for Shell and Application Utility Interface for Computer Operating System Environments, IEEE 1003.2/Draft 8 (POSIX Shell and Tools).

Related Documents.

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. FIPS 151, POSIX: Portable Operating System Interface for Computer Environments.

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. Promote portability of computer application programs at the source code level.

b. Simplify computer program documentation by the use of a standard portable system interface design.

c. Reduce staff hours in porting computer programs to different vendor systems and architectures.

d. Increase portability of acquired skills, resulting in reduced personnel training costs.

e. Maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS should be used for command language interpreters and utilities that are either developed or acquired for Government use where POSIX-like interfaces are required. This FIPS is applicable to the entire range of computer hardware, e.g.:

a. Micro-computer systems.

b. Mini-computer systems.

c. Engineering workstations.

d. Mainframes.

Specifications. The specifications for this FIPS are the specifications contained in the Institute of Electrical and Electronics Engineers Standard for Shell and Application Utility Interface for Computer Operating System Environments, IEEE 1003.2/Draft 8 (POSIX—Shell and Tools) as modified below. IEEE 1003.2/Draft 8 defines a command language interpreter and a set of utility programs. IEEE 1003.2/Draft 8 refers to and is a complement to draft IEEE Standard 1003.1–1988, POSIX.

This FIPS makes the following modifications to IEEE Standard 1003.2, Draft 8:

1. The implementation must support the C Locale (see IEEE 1003.2/Draft 8, Section 2.6).

2. The xd (hexadecimal dump) utility is not required.

3. Application Installation Utilities specified in Chapter 5 are not required.

4. The "-v" option of the cc utility (Section 9.1) is not required to operate as specified in IEEE 1003.2/Draft 8.

5. The shell features listed below are not required. This modification of the requirements of IEEE 1003.2/Draft 8 has been made to minimize the impact of changes between Draft 8 and the final version of IEEE Standard 1003.2.

a. Operators ({ }).

b. Reserved words [[ ]].

c. Substring expansions:
${name#pattern}
${name%pattern}
${name##pattern}
${name%%pattern}

d. String length expansion ${#name}.

e. Command substitution syntax ${command}.

f. Multi-digit positional parameters.

g. Built-in commands alias, typeset, and unalias.

h. Test operators -nt, -ot, and -ef.

i. Assigning values with export and readonly.

j. Symbolic names for signals and traps.

k. Separation of positional parameters expanded from $* and $@ by the first character of the IFS. Only the capability to separate parameters by a space is required.

l. Functions.

m. Function option -f for the unset command.

Recommendations. Users of this standard should be aware that it does not require the Shell and Tools interface to be implemented on a FIPS 151 conforming implementation. Users should also be aware that certain utilities and functions are optional in IEEE Standard 1003.2. To provide the greatest support for application portability, it is recommended that an implementation conforming to this FIPS also provide the following features:

1. A FIPS 151 conforming applications interface.

2. The UUCP protocol and utilities as specified in Appendix C of IEE Standard 1003.2/Draft 8.

3. Software Development Utilities Option (Chapter 7), when software will be developed on the systems being acquired.

4. C Language Bindings Option (Chapter 8).

5. C Language Development Utilities Option (Chapter 9), where software will be developed in C on the systems being acquired.

6. FORTRAN Development Utilities Option (Chapter 10), where software will be developed in FORTRAN on the systems being acquired.

Implementation. This standard is effective *6 months after publication in the* Federal Register. The other elements identified in the Appendix should be considered in planning for future procurements.

a. *Acquisition of a Conforming Portable Shell and Application Utility Interface.* Organizations developing applications which are to be acquired after the publication date of this standard and which have applications portability as a requirement should consider the use of this FIPS. Conformance to this FIPS should be considered whether the operating system environments are:

1. Developed internally,

2. Acquired as part of an ADP system procurement,

3. Acquired by separate procurement,

4. Used under an ADP leasing arrangement, or

5. Specified for use in contracts for programming services.

b. *Interpretation of the FIPS for Shell and Application Utility Interface.* NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, National Computer Systems Laboratory, Attn: POSIX Shell and Tools FIPS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. *Validation of Conforming Operating Systems Environments.* NIST is developing cooperatively with industry a validation suite for measuring conformance to this standard. This suite will be available for testing conformance of POSIX Shell and Tool implementations.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. [Sale of the included specifications document is by arrangement with the Institute of Electrical and Electronics Engineers, Incorporated.] When ordering, refer to Federal Information Processing Standards Publication —— (FIPSPUB ——), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 89–13412 Filed 6–6–89; 8:45 am]
BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the Gulf Oil Division, Cumberland Farms, Inc., From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On February 2, 1989, the Secretary of Commerce received a notice of appeal from the Gulf Oil Division, Cumberland Farms, Inc. (Appeallant), pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Connecticut Department of Environmental Protection (State) to the Appellant's consistency certification for a United States Army Corps of Engineers (Corps) permit to deredge approximately 44,800 cubic yards of material in New Haven Harbor and to

dispose of it in the open waters of Long Island Sound at the Central Long Island Sound disposal site. The State's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appeallant perfects the appeal by filling the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: May 31, 1989.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89–13421 Filed 6–6–89; 8:45 am]

BILLING CODE 3510–08–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Management Team (GMT) of the Pacific Fishery Management Council (Council) will convene a public meeting to discuss 1989 catch projections for sablefish and other species and will calculate the projected closure date for the non-trawl sablefish fishery. A sablefish economic analysis will be reviewed for presentation to the Council at its July 12–13 meeting. The GMT will also discuss automated hook extractors, the accounting of discards in stock assessments and harvest management, bycatch of yellowtail rockfish in the joint venture fishery, and other issues related to management of the Pacific Coast Groundfish fisheries.

Date And Time: The meeting will be held at 8:00 p.m., June 20, 1989.

Place: The meeting will be held in the Commission Meeting Room, Oregon Fish & Wildlife (ODFW) Office, 506 SW. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone 503–326–6352.

(Authority: 16 U.S.C. 1801 et seq.)

Date: June 1, 1989.

Richard H. Schaefer,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–13429 Filed 6–6–89; 8:45 am]

BILLING CODE 3510–22–M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 26, 1989 at 9:00 a.m. at the Hyatt on Union Square, 345 Stockton Avenue, San Francisco, California. Meeting location will be posted on hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of Minutes
III. Strategic Plan
IV. Rural Tourism Study
V. Visa Waiver Update
VI. Revision of National Tourism Policy Act
VII. EC 1992
VIII. 1990 Berlin Meeting
IX. Miscellaneous
X. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

Eric C. Peterson,

Acting Under Secretary, for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 89–13451 Filed 6–6–89; 8:45 am]

BILLING CODE 3510–11–M

DEPARTMENT OF DEFENSE

Office of the Inspector General

Privacy Act of 1974; New System of Records

AGENCY: Inspector General, DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The Office of the Inspector, Department of Defense, is adding a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). Under the provisions of subsection (e)(4) and (11) of the Act, public notice for comment must be made of any proposed new record system.

DATE: This proposed action will be effective without further notice July 7, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202–2884.

FOR FURTHER INFORMATION CONTACT: Dominick D. Wasielewski, (202) 697–6035, AUTOVON: 227–6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the Federal Register to this date as listed:

(50 FR 22279) May 29, 1985 (Compilation, changes follow)
(52 FR 26547) July 15, 1987
(52 FR 35754) September 23, 1987

A new system report containing an advance copy of this notice has been provided to the U.S. House Committee on Governmental Operations, the U.S. Senate Committee on Governmental Affairs, and to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 23, 1989, as required by subsection (r) of 5 U.S.C. 552a in order to permit an evaluation of the probable or

potential effect of this proposal on the privacy or other rights of individuals.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

CIG-10

SYSTEM NAME:

Validation of Credentials of DoD Contractors' Employees

SYSTEM LOCATION:

Department of Defense (DoD), Office of the Assistant Inspector General for Analysis and Followup, Analysis & External Coordination, 400 Army Navy Drive, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed by DoD Contractors, to include Consultants to the Contractors, selected on a random basis for validation of credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Résumés containing personal information consisting of an individual's name, social security number, schools attended, location of schools, degree(s) awarded, date(s) awarded, work history and last known or current address. Records also contain documents validating the individual's educational credentials, experience, and state, federal and/or board certification(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, the Inspector General Act of 1978, as amended; 10 U.S.C. Section 133, Secretary of Defense: Appointment, Powers, Duties and Delegation by; DoD Directive 5106.1, "Inspector General of the Department of Defense" (32 CFR Part 373).

PURPOSE:

To validate credentials such as education, experience, and state, federal and/or board certification of persons employed by DoD Contractors, where such credentials have been cited as part of the cost basis for accomplishing contract requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND THE PURPOSE OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Office of Inspector General's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records in file folders, computer magnetic disks and paper printouts in secure filing cabinets.

RETRIEVABILITY:

Paper records filed in folders and computer magnetic disks retrieved by using a computerized index of names.

SAFEGUARDS:

Paper records are filed in folders stored in a locked filing cabinet. Computer disks and printouts are stored in a locked filing cabinet. Locked filing cabinets are stored in a limited access area.

RETENTION AND DISPOSAL:

Paper records and computer disks are to be retained until completion of the overall validation process and data analysis, then destroyed. Where discrepancies occur in the listed credentials, during the validation process, those credentials at issue will be submitted to the Assistant Inspector General for Investigation for follow-up to resolve the issue.

SYSTEM MANAGER AND ADDRESS:

DoD Inspector General, Office of the Assistant Inspector General for Investigations, ATTN: Assistant Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURE:

Writen requests should be addressed to the System Manager and should be notarized.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records pertaining to them should submit a written request as indicated in "Notification procedure." Individual should provide his/her full name (first, middle, last), former maiden and married names or other aliases, name of DoD Contractor for whom employed and approximate dates, and current address.

CONTESTING RECORD PROCEDURES:

The rules for contesting contents and appealing initial determination will be provided upon request to the System Manager

RECORD SOURCE CATEGORIES:

DoD Contractor bid packages and/or personnel files, colleges/universities, and state/federal licensing and/or certification boards. To the extent that follow-up to resolve discrepancies is required, information collected directly from the individual may be included in investigative inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–13439 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 28 June 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive,-Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13492 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Strategic Defense Initiative Advisory Committee; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Strategic Defense Initiative Advisory Committee scheduled for May 22–23, 1989 as published in the **Federal Register** (Vol. 54, Page 18005, Wednesday, April 26, 1989, FR Doc 89–9972) has been cancelled. In all other respects the original notice remains unchanged.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13493 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for May 25, 1989 as published in the **Federal Register** (Vol. 54, No. 93, Page 21092, Tuesday, May 16, 1989, FR Doc. 89–11636) was held on May 31, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13494 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Advanced Naval Warfare Concepts; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for May 26, 1989 as published in the **Federal Register** (Vol. 54, No. 93, Page 21092, Tuesday, May 16, 1989, FR Doc 89–11636) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13495 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Defense Procurement With a Global Technology Base; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Defense Procurement With a Global Technology Base scheduled for June 1, 1989 as published in the **Federal Register** (Vol. 54, No. 93, Page 21093, Tuesday, May 16, 1989, FR Doc 89–11638.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13496 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology, Air Force Subgroup; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology, Air Force Subgroup will meet in closed session on October 11–12 and November 28–29, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide the Air Force with scientific advice on its activities in this area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

June 1, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–13497 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology, Air Force Subgroup; Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology, Air Force Subgroup scheduled for June 13–14 and September 14–15, 1989 as published in the **Federal Register** (Vol. 54, No. 73, Page 15539, Tuesday, April 18, 1989, FR Doc. 89–9247) will be held on June 20–21 and September 12–13, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13498 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness will meet in closed session on July 11–13, 1989, at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the contributions of modeling and simulation to Defense test and evaluation so as to improve the acquisition process.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

June 1, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–13499 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on SDIO Technology Assessment; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on SDIO Technology Assessment scheduled for May 3–4, 1989, as published in the **Federal Register** (Vol.

54, No. 51, Page 11263, Friday, March 17, 1989, FR Doc. 89–6295) has been cancelled.

June 1, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–13500 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness scheduled for May 17–18, 1989 as published in the **Federal Register** (Vol. 54, No. 70, Page 14833–14834, Thursday, April 13, 1989, FR Doc. 89–8806) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13501 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1989 Summer Study on Non-Cooperative Identification; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1989 Summer Study on Non-Cooperative Identification will meet in closed session on July 6–7, 1989 at Systems Planning Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will consider and make recommendations on future capabilities of military forces to distinguish enemy targets from friendly and civilian targets in offensive and defensive air operations and naval surface warfare.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89–13502 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 22 June 1989 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34–R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, Attn: MTPP–M, at telephone number 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 9 June 1989.

Dated: May 30, 1989.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 89–13636 Filed 6–6–89; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on June 21–22, 1989. The meeting will be held at E Systems, MelPar Division, 7700 Arlington Blvd., Falls Church, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on June 21 and 22, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the survivability of Navy tactical communications in a hostile environment. The agenda will include briefings and discussions on communications support systems and unified networking technology. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: June 2, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–13442 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on June 21 and 22, 1989. The meeting will be held at the Office of the Chief of Naval Research, 800 N. Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 21; and commence at 9:00 a.m. and terminate at 4:00 p.m. on June 22, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to naval aviation's ability to conduct lethal defense suppression missions in the year 2000. The agenda will include briefings and discussions related to program objectives, the threat, and Tacit Rainbow/SEEK Spinner Programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the

interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89–13443 Filed 6–6–89; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: At its May 24, 1989 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The amendment revises a rule adopted by the Commission on January 13, 1988. That rule, Resolution No. 88–2, established Basinwide water conservation performance standards for plumbing fixtures and fittings installed in new construction and renovation. The regulation required that all water conservation performance standards for plumbing fixtures and fittings adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates were specified as were certain specialized fixtures and fittings not covered by the regulation. The regulation also required certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. In addition, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with the adopted standards have been adopted within their area of jurisdiction. Finally, periodic review of the performance standards was also required to allow for incorporation of more stringent water conservation performance standards as technology advances.

Subsection 2.1.5(4) of the regulation required the Executive Director to conduct an initial review of the standards within a year to consider the modification of the current standard for water closets (a maximum of 3.5 gallons per flush) to require low consumption water closets (a maximum of 1.6 gallons per flush) effective January 1, 1990. A summary report documenting the results of this review was submitted to the Delaware River Basin Commission in January 1989. Based upon this review, the Commission proposed that the regulation be revised to require low consumption water closets effective January 1, 1991. It was also proposed that all water conservation performance standards for plumbing fixtures and fittings adopted by the Basin States or political subdivisions within the Basin comply with the low-consumption water closet requirement by January 1, 1991. In addition, the proposal called for modification of the schedule for state or local compliance with the performance standards in the Commonwealth of Pennsylvania, which does not yet have statewide performance standards for plumbing fixtures and fittings. The other Basin States already have statewide standards.

The proposal encouraged the Commonwealth of Pennsylvania to adopt water conservation performance standards for plumbing fixtures and fittings which comply with the Commission's standards for January 1, 1991. In the absence of Pennsylvania standards, the proposal called for the Commission to notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations which comply with the Commission standards. Upon such notification by the Commission, municipalities would have one year to adopt local regulations.

EFFECTIVE DATE: May 24, 1989.

ADDRESS: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on the proposed amendment on March 20, 1989 as noticed in the February 6, 1989 and March 13, 1989 issues of the **Federal Register** (Vol. 54, No. 23 and Vol. 54, No. 47). Based upon testimony received and further deliberation, the Commission added a provision to require that plumbing fixtures and fittings be certified and labeled by the manufacturer as meeting the Commission's water conservation performance standards. With that addition, the Commission has adopted its proposal and amended its Comprehensive Plan and Water Code of the Delaware River Basin.

Article 2 of the Water Code of the Delaware River Basin is hereby amended by the substitution of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings.

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) For sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) For shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) For water closets and associated flushing mechanism, maximum volume shall not exceed an average of one and six-tenths gallons per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M; and

(iv) For urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1991. In the absence of such regulations, the Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a). Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) To be acceptable for use in the Basin, plumbing fixtures and fittings shall be certified and labeled by the manufacturer as meeting the water conservation performance standards specified in subsection (1). Certification shall be based on independent test results. Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18M and ANSI A112.19.2M.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under § 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

Secretary.

May 30, 1989.

[FR Doc. 89-13360 Filed 6-6-89; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. P.L. 89-2-000 et al.]

Interstate Natural Gas Pipeline Rate Design; Black Marlin Pipeline Co. et al.

	Docket Nos.
In the matter of	
Interstate Natural Gas Pipeline Rate Design.	PL89-2-000
Black Marlin Pipeline Company	RP89-75-000
Chandeleur Pipeline Company	RP89-86-000
CNG Transmission Corporation	RP88-211-000
Columbia Gas Transmission Corporation.	RP89-168-000
Columbia Gulf Transmission Company.	RP89-167-000
El Paso Natural Gas Company	RP88-44-000
Florida Gas Transmission Company.	RP89-50-000
High Island Offshore System	RP89-37-000
Inland Gas Company, Inc.	RP89-65-000
Kentucky West Virginia Gas Company.	RP86-52-000 RP89-146-000 RP89-61-000
KN Energy, Inc.	RP87-86-005 RP86-11-002 RP85-11-019 (Phase II) RP89-110-000 RP89-111-000
Midwestern Gas Transmission Company.	RP89-35-000 RP89-36-000
National Fuel Gas Supply Corporation.	RP89-49-000
Northern Border Pipeline Company.	RP89-33-000
Northern Natural Gas Company	RP88-259-000
Northwest Pipeline Corporation	RP88-47-000
Panhandle Eastern Pipe Line Company.	RP88-262-000
Paiute Pipeline Company	RP88-227-000
Pelican Interstate Gas System	RP89-73-000
Sea Robin Pipeline Company	RP88-181-000
Tennessee Gas Pipeline Company.	RP88-228-000
Texas Eastern Gas Transmission Corporation.	RP88-67-000
Transcontinental Gas Pipe Line Corporation.	RP87-7-000
Transwestern Pipeline Company	RP89-48-000
Trunkline Gas Company	RP88-180-000
U-T Offshore System	RP89-38-000
West Texas Gas, Inc.	RP88-256-001
West Texas Gathering Company	RP89-67-000
Williams Natural Gas Company	RP87-33-000
Williston Basin Interstate Pipeline Company.	RP88-197-000 RP88-236-000 RP89-34-000

Policy Statement Providing Guidance with Respect to the Designing of Rates

Issued May 30, 1989.

I. Purpose

In 1985, the Commission adopted Order No. 436 [1] to launch a new era of open-access transportation by pipelines performing self-implementing transportation under either the Natural Gas Act [2] or the Natural Gas Policy Act (NGPA).[3] The Commission codified its new open-access transportation program in Part 284 of its regulations.[4] In Part 284, the Commission set forth its objectives and policies with respect to the designing of rates for a pipeline's open-access transportation services. As a result of its experience in designing transportation rates under the principles of Order No. 436, and in examining the design of the transportation component of sales rates, the Commission here states that the same goals and policies are equally applicable to both types of rates. The purpose of this order is to provide the administrative law judges (ALJs) and the participants (including the Commission staff) in the above-captioned proceedings with additional guidance on how to implement the Commission's rate objectives and policies under Part 284.[5] This policy statement will enable the participants to develop factual records under which the ALJs, in the first instance, and the Commission on review can fashion comprehensive rate design schemes tailored to particular pipelines which will fulfill the intent of the NGPA that market forces play a "more significant role in determining the supply, the demand, and the price of natural gas," [6] and the mandate of the Natural Gas Act that a pipeline's rates must be just and reasonable and must not result in any undue preference or undue discrimination.[7]

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[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Reg. Preambles 1982-1985] ¶ 30,665 (1985), *vacated and remanded, Associated Gas Distributors* v *FERC*, 824 F.2d 981 (D.C. Cir. 1987), *readopted on an interim basis*, Order No. 500, FERC Stats. & Regs. ¶ 30,761 (1987).

[2] Section 7, 15 USC 717f (1982).

[3] Section 311, 15 USC 3371 (1982).

[4] 18 CFR Part 284 (1988).

[5] The Commission recognizes that the caption to this order only includes proceedings that are pending before the ALJs and not proceedings that are pending before the Commission. The Commission intends to apply the principles set out here to cases pending before it on a case-by-case basis.

[6] *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Miss.*, 474 U.S. 409, 422 (1986).

[7] *See, e.g.*, Order No. 497, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, FERC Stats. & Regs. ¶ 30,820 (1988) for a discussion of the Commission's concern about possible abuses in the relationship between pipelines and their marketing affiliates.

To date, the Commission has permitted transportation rates to be used that were not in strict compliance with the requirements of Part 284. This has been allowed in order "to encourage pipelines to begin transporting under the new.regulations and to gain some experience with the operation of the new regulatory scheme." [8] However, the Commission has now gained experience with the Part 284 ratemaking methodology and the "pipelines have had experience providing transportation under the Part 284 regulations." [9] Hence, pipelines must demonstrate, and the Commission will ensure, that pipeline "rates comply with the requirements of Section 284.7 of the regulations." [10] In addition, pipelines will "bear the burden of justifying any deviations from the requirements of the regulations." [11]

This policy statement will deal with significant aspects of the rate design process and related matters. In particular, this policy statement will discuss seasonal rates, the division of fixed costs between the demand [12] and commodity [13] charges, capacity adjustments, discounted transportation, maximum interruptible rates, and rates for forward haul and backhaul transportation and exchange arrangements.

II. Rate Design Objectices

1. General Principles

The ratemaking process begins with the establishment of a cost of service or revenue requirement, continues through a series of steps by which the costs are assigned to various services and customer groups, and concludes with development of unit rates.[14] The establishment of a cost of service thus of necessity links rate design to costs. However, it has been recognized that the assignment of costs "is not a matter for the slide rule . . . . It has no claim to an exact science." [15] It "is not reducible to a simple mathematical exercise." [16] This means that cost assignment is more than simple mechanical accounting procedure of cost causation. Rather, cost assignment is a means for accomplishing a complex of sometimes contradictory goals and for reconciling often conflicting interests in the process of assigning revenue responsibility among the pipeline's diverse services and customers. The Commission's task is to weigh all relevant considerations by "integrat[ing] cost factors with non-cost factors and policy considerations" to fashion rates for each customer which are within the zone of reasonableness.[17] Hence, the Commission is "not required to adopt any particular rate design." [18] It is the "total effect" of the rate design method which counts rather than the particular rate design method employed.[19] Thus, the Commission encourages the participants in these proceedings to develop different methods to achieve the rate objectives, set forth in the Commission's regulations and discussed below, that are tailored to the particular circumstances of a pipeline's system.

The Commission notes that to the extent a particular method is theoretically consistent with these objectives but leads to undesirable or inequitable results, pragmatic adjustments can and should be made. These concerns will be addressed in particular cases after designing rates in light of the other goals. Then, the Commission can make any necessary adjustments to mitigate harsh or undesirable results.

2. Theory-Economic Efficiency

Section 284.7 of the Commission's regulations sets forth the Commission's objectives in designing transportation rates. Sections 284.7(c)(1) states that "[r]ates for service during peak periods should ration capacity." Section 284.7(c)(2) provides that "[r]ates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput." As stated above, those objectices are of equal applicability to the transportation portion of bundled sales rates. The objectives provide guidance in the development of rates that promote economic efficiency; that is, the efficient functioning of natural gas markets. Transportation rats (and policies) which inhibit efficient operation of markets are themselves inefficient and can not result in an equitable assignment of the pipeline's costs or revenue responsibility. The Commission is concerned with allocative and productive efficiency. Hence, economic efficiency is a necessary, but not necessarily the only objective which will enable the Commission to fashion just and reasonable, nondiscriminatory rates for all customers through the rate design process.

Allocative efficiency simply means that those who value the product or service the most should be the ones to have it. Productive efficiency simply means that products and services should be provided at the least possible cost. A price or rate is inefficient if a different pricing scheme can be developed which would make all ratepayers and the company better off.[20] For example, discounting prices to or above marginal costs to attract business will benefit other customers by lowering their contribution to fixed costs. Hence, a scheme which inhibits discounting may be inefficient and inequitable.[21]

Section 284.7 of the Commission's regulations reflects the Commission's goals of allocative and productive efficiency in the fashioning of maximum rates by requiring that peak rates ration capacity and that rates maximize throughout during all periods. The Commission has recognized in § 284.7(d)(3)(i) that it will be necessary in certain instances to achieve those

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[8] El Paso Natural Gas Co., 46 FERC ¶ 61.079 at p. 61,349 (1989).

[9] *Id.*

[10] *Id. See also* Northern Natural Gas Co., 45 FERC ¶ 61,097 at p. 61,318 (1988).

[11] 46 FERC ¶ 61,079 at p. 61,349.

[12] The appropriate transportation rate term is reservation fee. However, demand will be used in this order to refer to both the sales and transportation charges for the right to capacity.

[13] Commodity is a misnomer for a transportation rate because transportation is a usage service. Nonetheless, commodity will be used in this order to refer to both the sales and transportation charge for untis purchased or shipped.

[14] The pipeline's cost of service or revenue requirement is assigned to its customers through the rate design process. The first step in the rate design process is to divide the cost-of-service among the pipeline's major operations or functions such as production, gathering, transmission and storage. This step is called cost functionalization. The next step is to categorize the pipelines functionalized costs as either fixed or variable costs. The pipeline's costs are then classified (*i.e.*, assigned) to the demand and commodity componnents of its rates. This step is traditionally called cost classification. Next, the classified costs are allocated between the pipeline's jurisdictional and nonjurisdictional services, and among its jurisdictional zones. Ths step is called cost allocation. Last, unit rates for each service are determined. This step is also know as rate design. *See* Tennessee Gas Pipeline Co., 46 FERC ¶ 61,113 at p. 61,441 n.3 (1989).

[15] *Colorado Interstate Gas Co.* v. *FPC*, 324 U.S. 581, 589 (1945).

[16] *Fuels Research Councils, Inc.* v. *FPC*, 374 F.2d 842, 846 (7th Cir. 1967).

[17] *Northern Indiana Public Service Co.* v. *FERC*, 782 F.2d 730, 742 (7th Circ. 1986), *citing FPC* v. *Conway Corp.*, 426 US. 271, 277–79 (1976).

[18] *Id.* at739.

[19] *Fuels Research Councils, Inc.* v. *FPC*, 374 F.2d 842, 850–51 (7th Cir. 1967), *Citing FPC* v *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1942).

[20] Put another way, an efficient pricing scheme is one where no one can be made better off without making someone else worse off.

[21] *See Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 1010–11 (D.C. Cir. 1987). ("[P]ipeline transportation service is marked by a degree of natural monopoly * * * In such an industry, 'value of service' ratemaking (*i.e.*, rates varying on the basis of differing demand characteristics) has an established place, though not an an uncontested one. The equitable argument in favor of such differentials is that they may benefit captive customers by making a contribution to fixed costs that otherwise would not be made at all. (The efficiency argument is that such differentials will raise total volume closer to the level it would attain if all sales were priced at marginal cost.)" (Footnotes omitted)).

objectives by the use of seasonal rates for peak and off-peak periods. Moreover, the Commission has recognized in § 284.7(d)(5) that it may be necessary to selectively discount maximum rates to meet competition and attract or maintain business.[22] Rates designed to attain those objectives should result in an efficient allocation of capacity to those who value it and in productive efficiency by eliminating disincentives in the transportation of gas.[23]

In addition, a pipeline's sales and transportation services must be equivalent services in their treatment of the transportation of gas. Neither the transportation nor the sales service should provide a subsidy to the other service. In short, there should be no cross-subsidization between transportation and sales services. As the Commission has stated:

> [I]n light of the goals of this rule, rates should be so designed that the transportation component will not differ whether the customer is purchasing sales or transportation service.[24]

Of course, transportation and sales rates should recognize any differences in the quality of those services. For example, where firm sales customers have the benefit of all of a pipeline's production area facilities and firm transportation customers are limited in their access to receipt points to their aggregate mainline quantities, different maximum rate treatment would be justified. The absence for firm transportation customers of proportional access to production area facilities, flexible receipt points, and equal access to system storage facilities would justify a lower maximum rate than that embedded in the sales rate. Since rates should reflect the quality of the service, a lower quality service should have a lower rate.

With this discussion in mind, the Commission turns to specifics of the rate design process on which it wants a record to be developed.

III. The Issues

The Commission observes that the issues to be discussed, such as the derivation of seasonal rates, demand charges, maximum interruptible rates, and discounted rates are interrelated because they encompass the division of costs (*i.e.*, revenue responsibility) among various services and customers. The end result of the ratemaking process should as a whole promote the Commission's goals of, among other things, allocative and productive efficiency as discussed above.

The ALJs and the participants must develop records which delve into and resolve the following issues consistent with the directions of this policy statement. In addition, the participants must establish records on, and the ALJs must consider and articulate the impacts (benefits and detriments) of, the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers. The ALJs are also directed to explicitly articulate equitable factors considered in designing the rates, for example, whether rates design changes should be phased in.[25]

1. Annual Versus Seasonal Rates

Section 284.7(d)(3) provides that rates "must reasonably reflect any material variation in the cost of providing service due to * * * [w]hether the service is provided during a peak or off-peak period." The Commission has referred to the cost of fuel used to run compressors as an example of a cost that might differ or vary between peak and off-peak periods.[26] However, § 284.7(d)(3) only requires that at a minimum such marginal costs as the cost of compressor fuel be considered. Other factors such as differing demands for service between peak and off-peak periods may be considered. Based on experience, the Commission is concerned that the derivation of demand and commodity rates without regard to seasonal variations in use of, or demands on, the pipeline does not properly ration peak capacity or lead to efficient use of the pipeline in periods of excess capacity.

Accordingly, evidence must be presented as to whether a pipeline has sufficiently differentiated patterns of usage to justify peak and off-peak demand or commodity rates or both to fulfill the goal of economic efficiency.[27] If seasonal rates are warranted, then costs incurred to perform peak season service (such as the cost of certain system storage facilities) should be assigned solely to that service and other costs assigned to the peak period based on demand factors.[28] That is, differences in the demand for service between periods should be recognized in rates to efficiently ration capacity. However, it should also be considered whether the costs associated with the peak service period are appropriately reflected in the demand charge but are merely billed throughout the year to reasonably soften the impact on consumers of otherwise high peak fuel bills. These rates are seasonal with only the payment schedule levelized. The payment schedule of rates should not affect how the rates are designed.

2. The Demand and Commodity Charges

a. *General.* The process of dividing (*i.e.*, classifying) fixed transmission and storage costs between the demand and commodity components is closely related to the seasonal rate issue as both involve the assignment of costs for the purpose of peak pricing to achieve the Commission's goal of rationing peak capacity to those who value it the most. In addition, cost classification, by determining the level of costs in the commodity charge, is relevant to the Commission's goal of throughput maximization.

At present, most pipelines' costs are classified under the modified fixed variable method (MFV). The MFV method classifies all fixed production and gathering costs, all variable costs, and return on equity investment in transmission and storage facilities and related income taxes to the commodity component. The remaining fixed costs,

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[22] 18 CFR 284.7(d)(5). *See* Associated Gas Distributors v. FERC, 824 F.2d 981, 1010–1012 (D.C. Cir. 1987) ("For nearly 100 years, * * * the courts have interpreted the antidiscrimination provisions of the Interstate Commerce Act to allow the ICC to approve differentials justified exclusively by competition.") (at 1011).

[23] The Commission recognizes that heretofore it has required allocation using the "first-come first-served" principle, with some possible reallocation where a new shipper is willing to pay a higher rate up to the maximum rate and the existing shipper is unwilling to match the higher rate. That principle has led to the current positions in the queues for firm and interruptible transportation services today on open access pipelines across the country under the first-come, first-served mechanism as currently implemented. A shift in emphasis now to mechanisms and rates which more directly allocate capacity to those who value it more highly may require a transition, as individual rate cases are considered; and the Commission encourages the parties to consider how best to accommodate such transitions, while avoiding any unnecessary complication of or disruption to transportation services provided across the country. The Commission also acknowledges that individual pipeline systems may have characteristics which justify various transitional mechanisms in any reorientation of capacity allocation methodologies.

[24] Order No. 436, *supra* n. 1, at p. 31,535.

[25] *See* p. 5 *supra* on pragmatic adjustments.

[26] *See, e.g.*, Texas Eastern Transmission Corp., 37 FERC ¶ 61,260 at p. 61,705–06 (1986).

[27] It appears that many pipelines have a five-month winter peak from November 1 through March 31. The remaining seven-months are off-peak. This may vary by company.

[28] One approach would be to assign seasonal costs by seasonal load factors. Another might be to assign the cost of transmission facilities used to provide service above the annual load factor to the peak period. The remaining transmission costs could be divided evenly between the seasons. For example, if the peak period load factor is 90 percent, the annual load factor is 50 percent, and D–1 costs are $100, then $70 would be assigned to the peak period (90% − 50% = 40% × $100 = $40 + 50% × $60 ($100 − $40) = $30), and $30 would be assigned to the off-peak period (50% × $60 ($100 − $40)).

including return of investment in transmission plant and storage facilities (*i.e.*, depreciation expense), are classified to the demand component.[29] The MFV demand component currently consists of two demand charges. The first, or D–1 charge, reflects peak considerations. The second, or D–2 charge, reflects annual considerations. The costs classified to the demand component are assigned to the D–1 and D–2 charges on a 50–50 basis.

The Commission is concerned that MFV may be outdated in light of the significant changes in the nature of the gas pipeline industry since the adoption of Order No. 436 in 1985 and the further decontrol of gas under the NGPA.[30] In particular, the MFV division of costs between the demand and commodity components was designed to help pipelines in their role as a merchant.[31] But today most major interstate pipelines are functioning primarily as transporters. In addition, the D–2 charge was adopted in part to soften the impact on low load factor customers of the shift of fixed costs from the commodity charge to the demand charge. However, those very customers have objected to the D–2 charge on the ground that D–2 nominations will, in fact, shift costs to the low load factor customers.[32] Moreover, the transition period has been completed.[33] Hence a D–2 charge may no longer be warranted.[34]

b. *The Central Question.* The task is to determine the division of fixed costs between the peak related charge (D–1) and the charges associated with annual usage (the D–2 and commodity charges). The central question is whether the costs assigned to the D–1 charge are appropriate in amount to ration peak capacity to those who value it the most.[35] The answer may depend on whether there is a waiting list for firm capacity. Such a queue may indicate that the present D–1 (peak) charge is not rationing capacity. If capacity is consistently underbooked, it may be that the D–1 (peak) charge is excessive. In either event, the price is not appropriate because it produces an inefficient allocation of capacity on the pipeline. If the D–1 charge needs to be increased to properly reflect the demand for peak service, costs (*i.e.*, revenue responsibility) could be shifted from the D–2 charge or, if necessary, from the commodity charge. As to the latter, examples are fixed storage costs [36] or some portion of return on equity.[37] In addition, as discussed above, the D–2 charge may no longer be warranted. In that case, any costs remaining therein after a shift of costs to the D–1 charge should be moved into the commodity charge. Moreover, the use of seasonal rates may also obviate the need for a D–2 charge. In addition, the issue of whether and how undue cost shifts should be mitigated in the short run (such as by a phasing in mechanism) should be considered. The aim is to soften the initial impact not to change an otherwise just and reasonable assignment of cost or revenue responsibility. The ALJs and the participants must develop records to resolve the issues discussed here.

3. Capacity Adjustments

The use of peak and off-peak rates and a change in cost classification might result in a shifting of a substantial amount of costs to the charge for peak service. As stated above, the Commission's goal in any shifting of costs to peak service is to ration peak capacity by price to those who value it the most. Therefore, the participants to these proceedings must address and explore various ways to provide a contract demand adjustment option in tandem with increased charges for peak service due to the implementation of seasonal rates or classification changes to achieve the rationing capacity objective. For example, pipelines and their customers must pursue contract demand reductions in conjunction with peak rate increases. In addition, it might be appropriate for customers to have different daily contract demand rights for peak and off-peak periods. Or, customers could be permitted the use of different daily contract demand rights on a monthly basis.[38]

Additionally, the pipelines should consider offering a short-term contract demand adjustment option to its firm sales and transportation customers. Firm sales and transportation customers could agree to release their capacity to the pipeline for a fixed term to enable the pipeline to resell the capacity as firm transportation under Part 284. For example, a firm customer might conclude that it wants to retain its contract demand but that at present it is not needed to serve customers in one season or for one or two years. The firm customer would inform the pipeline of this. The pipeline might have other customers or potential customers that want the assurance of firm transportation service for short terms as opposed to interruptible service. The pipeline would be obligated to offer the capacity for transportation under Part 284 of the Commission's regulations. It would have to sell the released capacity on a nondiscriminatory basis and not favor affiliates and would charge rates pursuant to §§ 284.7 and 284.8. Under this kind of arrangement, the pipeline would share the proceeds with the firm customers releasing capacity.[39] The details of such capacity releasing, including the method of sharing proceeds and operational procedures,[40] would be determined in the individual proceedings.[41]

Nothing stated here should be viewed as preventing the participants from considering either capacity brokering [42] or capacity reassignment by firm shippers.[43] The Commission has given

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[29] Upstream pipeline charges are assigned to the downstream pipeline's demand and commodity components in the same manner as the charges are billed by the upstream pipeline to the downstream pipeline. This is the "as-billed" doctrine.

[30] MFV was first adopted in 1983 in Natural Gas Pipeline Company of America, 25 FERC ¶ 61,178 (1983), *order on reh'g*, 26 FERC ¶ 61,203 (1984), *aff'd in relevant part, Northern Indiana Public Service Co.* v. *FERC*, 782 F.2d 730 (7th Cir. 1986).

[31] MFV changed the assignment of fixed costs to the commodity charge from either the United method's 75 percent or the Seaboard method's 50 percent. In almost all cases, this reduced the share of fixed costs in the commodity charge.

[32] *E.g.*, Tennessee Gas Pipeline Co., 46 FERC ¶ 61,113 at p. 61,445–46 (1989).

[33] Transcontinental Gas Pipeline Corp., 46 FERC ¶ 61,364 at p. 62,139 (1989).

[34] *See also Id.*

[35] The Commission recognizes that customers on many pipelines do not have opportunity to adjust their contract demand volumes, but that such adjustments may be necessary to efficiently ration capacity. *See infra* Capacity Adjustments.

[36] The return and taxes on system storage investment are in the commodity charge at present and even though allocated by seasons, the storage may perform a peaking service and may belong wholly in the demand charge.

[37] For example, the return on equity up to the T-bill rate and related taxes might be reassigned to the D–1 charge with the remainder of the return and associated taxes staying in the commodity charge.

[38] *See also* Transcontinental Gas Pipe Line Corp., 46 FERC ¶ 61,364 at p. 62,139 (1989).

[39] If proceeds are shared with the customer releasing capacity, costs need not be allocated to the transportation service that would be provided with the released capacity.

[40] For example, the pipeline might establish a separate queue for this service with priority going to those in any current queue for firm service.

[41] The capacity releasing described above differs from capacity brokering as described in the proposed capacity brokering rulemaking in Docket No. RM88–13–000 (Brokering of Interstate Natural Gas Pipeline Capacity, Proposed Regulations, Stats. & Regs. ¶ 32,460 (1988)) and the United experiment described in United Gas Pipe Line Co., 46 FERC ¶ 61,060 (1989) in the following ways. The pipeline, not its customer, would be the only supplier of the service. The pipeline would be subject to the unlawful discrimination proscription of its open-access certificate for these transactions. Last, the pipeline would receive a fee as an incentive for the resale of its customer's firm capacity.

[42] *See* citations in footnote 41.

[43] *See* Wyoming-California Pipeline Co., 45 FERC ¶ 61,234, at p. 61,678 (1988), *reh'g denied*, 46 FERC ¶ 61,310 at pp. 61,927–28 (1989).

the pipelines and participants a wide range of options so that they can tailor their services to their particular needs.

4. Discounting and Maximum Interruptible Rates

a. *Discounting.* Section 284.7(d) requires a pipeline to file maximum and minimum transportation rates for both firm and interruptible service and permits the pipeline to charge rates to customers within the maximum and minimum range. Under this section a pipeline is permitted to discount in order to maximize throughput and thereby benefit customers by spreading fixed cost recovery over more units of service. Section 284.7(c)(3) states the rate objective that "[t]he pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service." [44]

Many have read this requirement to mean that a pipeline must assume in filing its next rate case that the volumes it has transported at discounted rates would still be transported if the maximum rate were charged. In light of the competitive market that has emerged in the gas industry, this assumption is not a realistic one. In other words, the problem with this objective is that if a pipeline must assume that previously discounted service will be priced at the maximum rate when it files a new rate case there may be a disincentive to pipelines discounting their services in the future to capture marginal firm and interruptible business. That would occur because the pipeline might not be able to recover its cost-of-service, if the maximum rates are based on throughput achieved by discounting. The court in *Associated Gas Distributors* v. *FERC* described this situation and stated that there was no reason to suppose that the Commission intended for a pipeline to calculate prices assuming the carriage of discounted traffic at a fully allocated price.[45]

The objective set forth in § 284.7(c)(3) was designed to prevent subsidization of the discounts by the pipleines' nondiscounted rates.[46] That objective must be achieved in light of Order No. 436's goal of maximizing throughput. Therefore, the following discussion indicates ways to calculate a pipeline's rates after it has been discounting so as to achieve both objectives set out in the regulations.

At the outset, however, the Commission reiterates that pipelines must give discounts on a non-discriminatory basis, and the Commission is concerned about selective discounts that have the potential for giving rise to undue discrimination, including the potential for giving rise to undue discrimination, including discounts to affiliates.[47] The following discussion about how to design rates to avoid a disincentive to discounting transportaion rates does not alter the standards that apply to the Commission's review of a pipeline's decision as to when and how to discount. That is, discounts must be given on a nondiscriminatory basis, and discounts to affiliates will be carefully scrutinized,[48] as will be the treatment of past discounts in projecting future units of service.

One approach would be that maximum rates can be derived using separate estimates of units to be transported at the maximum rate and at discounted rates. Projected revenues from volumes at the maximum rate would be derived using only the units projected to be transported at the maximum rate. Revenues for service which can be retained or acquired at less than the maximum rate should be derived by a separate estimate of revenues assuming the lower rates. Another approach to avoid penalizing the pipeline for discounted service would adjust the volumes attributable to "undiscounted" throughput by adding to those volumes some portion of the volumes that were transported under discounted rates. For example, if a unit of service can only be sold at one third of the maximum rate, one third of a unit would be added to projected "undiscounted" throughput.

The Commission also recognizes that in a rate case it may be difficult to forecast discounted units of service at particular prices. For example, discounts may depend on variables, such as the prices of alternative fuels. Accordingly, the ALJs and participants should consider methods which deal with the problem of the difficulty in forecasting revenues from discounting and which also do not discourage the pipeline from transacting such business.[49]

b. *Maximum Interruptible Rates.* This section deals with the determination of maximum interruptible rates. Section 284.7(d)(4) requires that maximum interruptible rates be determined by the allocation of volumes and costs to interruptible service. In practice, this has been accomplished by the use of the 100 percent load factor rate method.[50] As the Commission has recently stated, it is time to re-examine the appropriateness of 100 percent load factor rates.[51] The Commission stated:

> The Commission has hitherto found that rates derived on a 100 percent load factor basis are just and reasonable. The central rationale has been that such a rate does no more than require interruptible customers to pay a rate which includes all of the fixed costs of providing service. Moreover, the Commission has found that any difference in quality between interruptible and firm service is recognized by the fact that interruptible customers bear none of the risk of unused capacity because they pay only for service used.

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[44] A pipeline's projected units of service may only be changed by the pipeline in a section 4 rate filing. The projected units of service concept involves giving pipelines an incentive to maximize throughput. Selective discounting furthers similar objectives, by allowing pipelines to retain and attract business by meeting competition. Order No. 436, *supra* n. 1 at p. 31,546; Order No. 436–A, [Reg. Preambles 1982–1985] FERC Stats & Regs. ¶ 30,675 at p. 31,679 (1985).

[45] 824 F.2d 981, 1012 (D.C. Cir. 1987).

[46] *See* Order No. 436, *supra* n. 1 at p. 31,545.

[47] See Order No. 497, note 7 *supra* at p. 31,135.

[48] *See* Order No. 436, *supra* n. 1 at p. 31,546 and Order No. 436–A, *supra* n. 44 at p. 31,679 (1985).

[49] The Commission encourages the participants to develop approaches to this issue which are consistent with the overall objective of encouraging efficiency. The Commission is willing to consider, along with other proposals, the following two approaches in treating discounted transportation volumes.

One possible approach would be a benefit sharing approach whereby at one extreme no volumes or revenues are allocated to discounted interruptible service. The pipeline would share revenues with firm customers which did not use their total firm service, thereby making interruptible service available. The amount and method of sharing could be determined in the individual proceedings. In return, the pipeline would share the benefits of such service rather than keep all revenues from the discounted service. The firm customers would pay a higher rate for their service but in return would have the possibility of more than offsetting their higher rates by sharing the benefits of the pipeline's discounted service.

A less extreme approach could be to allocate costs or revenue responsibility to discounted service in the proceeding. If the pipeline's revenues above marginal costs are below the costs assigned to the service, the pipeline and firm customers not using their total firm capacity would share in the burden of the deficit. If the revenues above marginal cost are in excess of the assigned costs, the pipeline would share the excess revenues with its firm customers which did not use their total firm capacity. The amounts and methods of sharing the losses and gains would be determined in the proceeding. There also could be agreed upon predetermined amounts for the pipeline to absorb as losses or keep as gains before sharing begins.

[50] In formula form, where D means demand and C means commodity, the 100 percent load factor rate is computed as follows:

$$\frac{D\text{-}1}{365} \times 12 + D\text{-}2 + C = \text{rate per Mcf per day.}$$

[51] Transcontinental Gas Pipe Line Corp., 46 FERC ¶ 61,364 at p. 62,143 (1989).

The Commission believes that its and the industry's increased experience with interruptible service demonstrates that it is time to re-examine the Commission's policy concerning 100 percent load factor rates with respect to both the cost incurrence and quality of service rationales and other factors, such as the customers' competitive posture *vis a vis* alternative fuels and the possible need for seasonally differentiated rates. Accordingly, the Commission will permit the parties in this proceeding as well as other proceedings where interruptible rates are at issue to explore the issue of whether lower rates than those derived on a 100 percent load factor basis are appropriate.[52]

The issue is whether the 100 percent load factor rate yields a maximum interruptible rate which is too high to efficiently maximize throughput and is therefore an inefficient allocation of costs or revenue responsibility to interruptible service. The answer depends on an analysis of the pipeline's package of rates and services and not merely on an examination of the 100 percent load factor method by itself. For example, the 100 percent load factor method may be an appropriate way to set a maximum rate which acts as a cap on a pipeline's market power where it is efficiently discounting to maximize throughput or where the pipeline is using peak and off-peak rates.

Demand rates can also be viewed as both a charge for the right or option to use capacity and as a charge to cover the costs associated with the use of the capacity. If the demand rate is in part a charge for a right to capacity, some portion of the demand charge is not related to costs incurred in providing service. That is, a part of the demand charge will be associated solely with the value of the right to demand service. This approach may warrant excluding costs assigned to the demand charge in whole or in part when deriving maximum interruptible rates on an annual basis. Agian, the use of peak and off-peak rates also may warrant the use of peak and off-peak maximum interruptible rates derived under the 100 percent load factor method.

Last, the Commission repeats that a rate for service should reflect the quality of the service as compared to other services.[53] For example, capacity releasing, capacity brokering, and capacity assignment would create new classes of firm service. In addition, the ability to release, assign, or broker a service adds value to the service itself. The participants should address how these new services affect the quality of other services. The pipelines and participants can also consider different services which vary in quality from the traditional firm and interruptible services. The rates for both new and old services should reflect the different quality of the services.

5. *Transportation Rates*

The transportation of natural gas entails the movement of the gas from a point of entry into the pipeline to a point of delivery from the system. However, this is often accomplished by a process of displacement in which gas is delivered into the system and received from the system by adjusting pressure. At times, a shipper's gas will not make a continuous forward or direct haul. Section 284.7(d)(3) recognizes that there are different patterns of transportation in the pipeline industry by not mandating mileage-based rates. Section 284.7(d)(3) requires only that rates "reasonable reflect any material variation in the cost of providing service due to * * * [t]he distance over which the transportation is provided." Order No. 436 discussed this as follows:

[For example], on most pipeline systems the costs of providing service are materially affected by the distance the gas is transported. The rates for such a pipeline should reflect these differences. But on other pipelines or for particular types of services distance may not materially affect the cost of providing service. In these situations the rates need not be based on mileage or zones. In short, all that is required is what is required of all rates: that they reflect the cost of providing the service. Again, the rate standards imposed by the rule will be applied in individual fact-specific cases.[54]

Where gas is moved in a forward haul an Mcf-file rate may be appropriate, however § 284.1 defines transportation to include an "exchange, backhaul, displacement or other methods of transportation." Those forms of transportation consist of a wide variety of factual scenarios which make it difficult to formulate one policy to encompass all situations. The following discussion deals with forms of transportation which do not use capacity in a forward haul and therefore may create additional capacity.

For example, backhaul transportation occurs when a shipper delivers gas to a pipeline downstream of the point where the shipper receives gas from the pipeline. Of course, there is no actual physical backhaul or reversal of flow. The transaction is effectively an exchange where the pipeline delivers either its own gas or another shipper's gas to the backhaul shipper in exchange for the latter's gas.[55] The backhaul or exchange may create additional capacity on the pipeline between the exchange (receipt and delivery) points and results in cost savings through the pipeline's avoidance of marginal costs. Hence, the pipeline's backhaul and exchange services are efficient. The question is how to price those services. The ALJs and the participants must develop records with respect to the appropriate maximum rate a pipeline should charge for backhauls and exchanges.[56] In addition, backhaul and exchange rates are within the pipeline's selective discounting authority. While § 284.7(d)(4) requires that a minimum rate "be based on the average variable costs which are properly allocated to the service to which the rate applies," a no fee minimum rate may be warranted to permit pipelines and shippers to agree that no fee should be charged when an arrangement is mutually beneficial and produces substantially equal benefits. Last, backhauls and exchanges must be performed on a non-discriminatory basis.[57] In that regard, the Commission is concerned that pipelines generally might not offer no fee or minimum fee transactions to shippers other than other pipelines and pipeline affiliated shippers. The Commission intends that any pipeline offering such transactions to other pipelines and/or pipeline affiliated shippers must also extend the same opportunity to all other shippers under terms and conditions whereby all similarly situated shippers, regardless of pipeline or affiliate status, must have an equal opportunity to utilize such transactions. The Commission also notes that any such transactions between a particular pipeline and its affiliate would be subject to Order No. 497.

IV. Separating Services

Section 284.7(d) requires that a "rate * * * separately identify cost components attributable to transportation, storage, and gathering costs." However, section 284(d)(4)(i) also requires that rates "recover * * * solely those costs which are properly allocated to the service to which the rate

[52] *Id.* (Footnote omitted.)

[53] *See supra* p. 8.

[54] Order No. 436, *supra* n. 1, at p. 31,538.

[55] In a more typical "exchange" arrangement, two or more parties would be delivering gas and two or more parties would be receiving gas. Quite often, the parties involved in such exchanges are interstate pipelines.

[56] Cases where the Commission permitted pipelines to use their direct haul rates no longer embody Commission policy. *E.g.*, Texas Eastern Transmission Corp., 37 FERC ¶ 61,260 at p. 61,708 (1986); Northern Natural Gas Co., 37 FERC ¶ 61,272 at p. 61,815 (1986).

[57] See Northern Natural Gas Co., 37 FERC ¶ 61,272 at p. 61,815 (1986).

applies." Hence, a pipeline should only charge for gathering and storage services actually performed for a customer. The ALJs and the participants are directed to fashion records to determine whether the pipeline's storage functions and gathering and other production area services, such as processing and production area transportation, should be offered as separate services with separately charged rates and, if so, what would be the appropriate rates. This does not mean that a bundled rate is inappropriate. The Commission, however, prefers fully unbundled services. In addition, the pipelines and the participants should explore, in addition to traditional service, the pipeline separately selling gas (the commodity) without the transportation service, with the customer using its right to capacity to move the gas.

V. Conclusion

The ALJs and the participants (including the Commission staff) should develop records consistent with the content of this policy statement. The ALJs are directed to reopen the records, if necessary, to develop the records on the issues discussed above. The participants must establish records on, and the ALJs must consider and articulate the impacts (benefits and detriments) of, the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers. The ALJs are also directed to explicitly articulate equitable factors considered in designing the rates.[58] However, the participants are not limited to the methodologies and issues discussed above. The Commission will consider other methods that will achieve the goals of rationing peak capacity and maximizing throughout. The Commission emphasizes that it is not mandating a particular end result. As stated earlier, the end result is to be tailored to the particular circumstances of a pipeline system. To the extent a pipeline has several rate cases pending, the ALJs and the participants should decide in which proceeding it would be appropriate to develop records on the issues discussed above.

In these proceedings the ALJs should not grant requests for late intervention by persons who seek to intervene to participate in the additional record development required by this order unless such late intervenors have a direct stake in the outcome of the proceeding and their interest would not be adequately represented by existing parties. The Commission intends that the ALJs exercise their discretion to grant late intervention in these cases very sparingly. The Commission does not intend to transform any of these proceedings into generic industry-wide forums for policy development. Any persons that are not currently parties to the rate cases listed in the caption to this order and any party in one of those rate cases that wants to seek rehearing of the general policy statements in this order should file in Docket No. PL89–2–000.

By the Commission. Commissioner Stalon concurred with a statement to be issued later. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Trabandt, Commissioner, *concurring:*

1. General

I concur generally with this rate design policy statement, even though I would have preferred strongly to adopt a stronger and more precise policy statement. I also have very strong reservations about the discounting feature of the policy statement. While there have been several modifications to the draft discussed at the May 17, 1989, Commission meeting, I still have serious procedural and substantive concerns that have not been addressed. I discuss the following comments, recommendations, and revised text in an effort to sharpen the focus on those issues. I look forward to reviewing these matters further on rehearing. Hopefully, the Commission can resolve as many of these issues as possible in the final policy statement on rehearing.

2. Major Interstate Pipelines Not Included in the Policy Statement

A. Comment

This issue was discussed at the May 17 meeting, but remains unresolved. I am still concerned that our failure to address rate design issues on these pipelines is a large gap in the interstate system by any measure. That failure also could extend a competitive advantage to these pipelines over competing pipelines directly subject to this policy statement. It also virtually precludes any hope of near-term uniformity and consistency in general rate design. Additionally, the Policy Statement largely reiterates rate design principles first enunciated in Order No. 436 in October, 1985, after a Notice of Inquiry and a Notice of Proposed Rulemaking, so there has been more than abundant time over the past three and a half years to make adjustments to conform. The OPPR memo of May 19, 1989, indicates that nine pipelines are not included in this policy statement. They fall into five distinct categories described below. The dates in parentheses for each pipeline indicate when the pipeline would be obligated by current regulations (which could change as a function of other policy initiatives) to file a new rate case where the rate design issues could be addressed. I would note that most are at least a year away and some are late 1992. The categories and included pipelines are as follows:

(1) Settlement just approved: Southern (10/89)

(2) Initial Decision Pending: CIG (7/90)

(3) Settlement certified and pending: Arkla (6/91), Natural (1/92), Texas Gas (11/92), Questar (11/91)

(4) Settlement approved, but rehearing still pending: Algonquin (5/90), United (11/91)

(5) New rate case filed, suspension order pending on May 31 Agenda: ANR

Footnote 5 on page 2 of the slip op. acknowledges the fact that the caption does not include proceedings pending before the Commission, while stating an intent to apply the principles in the policy statement to those cases on a "case-by-case basis." Apparently, that case-by-case basis would involve a balancing of the degree of conformity with these rate design principles, the procedural status of the case, support or opposition and the overall acceptability of the rate proposal.

I do not support a case-by-case approach to this requirement, because there are always cogent arguments for approving a settlement once it gets to the Commission. As noted above, there has been abundant time to implement most of these principles first enunciated in Order No. 436. In that regard, I would not be surprised if the Natural settlement scheduled for the May 31, 1989, Commission Meeting is largely approved, even though it deviates materially from the thrust of this policy statement on certain key features. That could likely be the pattern for the other eight pipelines as well.

B. Recommendation

Modify the order to state that, consistent with the Commission's intention that the identified rate design principles be addressed on an industry-wide basis and also to avoid any competitive advantage to a non-included pipeline, the Commission states its intent to require that parties in categories (2), (3), (4), and (5) above and Southern when it files the rate case to be effective 10/89 will be required to address the matters set forth in the

[58] See p. 5, *supra*, on pragmatic adjustments.

policy statement. To that end, the Commission will issue supplemental orders in the respective dockets establishing expedited procedures to satisfy that requirement. The Commission notes that its failure to impose such a requirement would mean that those pipelines would not be required effectively to address these rate design issues for periods of from one to three and a half years, which would otherwise be unacceptable, and that those pipelines could obtain an important competitive advantage over the pipelines listed in the dockets in this order. (A compromise might be that the docket for any pipeline not required to file a new rate case within 6 months or 1 year would be subject to this requirement).

3. General Issue of Policy Direction or Guidance

A. Comment

While I appreciate that there apparently is some disagreement about mandating specific rate design results, I believe the current draft is still too weak under any circumstances as a general matter (with the exception of discounting, discussed below, on which I disagree with the mandated result). Legally, under *Pacific Gas & Electric Co.* v. *FPC*, 506 F.2d 33 (D.C. Cir. 1974), we could go much farther if we chose to do so, either generally or on any specific issues. The court there sustained a strong FPC policy statement on curtailment priorities as that issue became manifest in a series of cases. The FCPC has stated its intention to follow a particular end use priority schedule, unless a particular company demonstrated that a different curtailment plan was more in the public interest or where extraordinary circumstances would preclude strict adherence to the curtailment policy in the policy statement. While opportunity would be afforded interested parties in specific cases to challenge or support the new policy through factual or legal presentations, the FPC concluded that, based on its review of the records of various proceedings and its general knowledge of the industry, the curtailment schedules should be applied to all jurisdictional pipelines, unless extraordinary circumstances could be established.

Given our express acknowledgement that we have permitted rates that were not completely consistent with the objectives and requirements of Order No. 436 and our general experience otherwise, I believe, as a matter of policy, we should at least consider a strnger position in the order, (1) on a generic basis, and (2) with some of all of the individual rate design features. We would be on firm legal ground and we have full justification under the express requirements and preamble discussion in Order No. 436. In the alternative, if we adopt the more "wishy-washy" approach in the current order for the Order No. 436 items, it can only signal that we continue to lack the requisite commitment or resolve to force these rate design features as a general matter consistent with the clear intent of Order No. 436. I would prefer strongly not to support that result. The following recommendation addresses the generic approach in the current draft.

B. Recommendation

The discussion in the first paragraph on page 3 is a positive assertion of our current intent to enforce the requirements of § 284.7 and require pipelines to bear the burden of justifying any deviation. Subsequent discussion of specific issues and the conclusion on page 20, however, can, and probably will, be read as a far lesser requirement that the parties in each case only really are required to address these issues, but not satisfy the objectives and specific requirements of Order No. 436 and § 284.7, among others. To preemptively negate that general impression, add the following statement before the last paragraph on page 21.

"Finally, the Commission reiterates its commitment that the rates on any jurisdictional pipeline subject to Order No. 436 must comply with the requirements of Order No. 436 generally and specifically with the requirements of § 284.7 of the regulations, unless the pipline persuasively establishes that a particular deviation is justified on that system. In that regard, based on our review of various Order No. 436 proceedings and our general knowledge of the industry in today's market situation, we have conluded generally that, barring extraordinary circumstances justifiying such a deviation, the rate design features set forth in Order No. 436 must now be implemented on all subject pipelines. While opportunity will be afforded to interested parties in specific cases as set forth above, we have resolved to be guided generally in our review of the cases by that conclusion."

4. Annual Versus Seasonal Rates

A. Comment

Section 284.7 clearly establishes the requirement for much more than lip service to this rate design feature. The NGSA petition (Appendix A, page 2) indicates that the following major pipelines did not then have seasonal rates:

ANR, Columbia, Columbia Gulf, Consolidated, El Paso, Natural, Northern, Northwest, Panhandle, Southern (filed, but rejected), Tennessee, Texas Eastern, Transco, Transwestern, Trunkline, and United.

Today, most, if not all, of those pipelines still do not have seasonal rates in place, although there has been some increased interest by some pipelines in various statements or filings. On balance, it is still clear that pipelines are still objecting to this aspect of 284.7.

B. Recommendation

Modify the order to make clear that there is at least a presumption in support of seasonally differentiated rates. On page 9, add the following sentence at the end of the first paragraph under "1. Annual Versus Seasonal Rates."

"The Commission, therefore, concludes that seasonally differentiated rates generally should be adopted, unless the pipeline can demonstrate that exceptional circumstances exist which justify some deviation from fully senasonally differentiated rates. Where such deviation can be justified on an individual pipeline basis, the pipeline nevertheless would be expected to satisfy the stated objectives of section 284.7 in the context of the deviation."

Also, modify the second sentence of the next paragraph to remove the apparent ambiguity or "wishy-washiness," as follows:

Instead of "If seasonal rates are warranted * * *," modify to read, "For seasonal rates required unless there is a justified deviation, cost incurred * * *"

5. Demand and Commodity Charges

A. Comment

As discussed at the May 17 meeting, I remain concerned that, while we have questioned whether the Modified Fixed Variable Method (MFV) may be outdated, we have not been specific enough as to our general direction to provide any meaningful guidance to the parties. Although we honestly may not have a specific result in mind, we should do more than just raise the question alone as the issue in the cases. It is not enough to say (1) that most pipelines today are transporters (since only 10% of CD has been converted to F.T. and the vast bulk of transportation is I.T.) or (2) that the intended beneficiaries, the low load factor customers, have objected in some cases to the application of MFV. I

recommend we stake out at least an opening position for purposes of an analytical point of departure in the industry-wide reconsideration of MFV.

B. Recommendation

On page 11, before subparagraph "b. *The Central Question,*" insert the following additional discussion:

In particular, the Commission is concerned that in today's natural gas market the MFV two-part demand charge has the effect of shifting costs of pipeline capacity to off-peak usage with rates for firm capacity largely unrelated to the value and true cost of the rendered service. The result can effectively insulate the firm customer from the true fixed costs of the firm service, such that the rates may provide an incentive for the uneconomic retention or "hoarding" of firm capacity rights leading to a major impediment to the availability of firm, rather than interruptible, service. A shift away from the MFV two-part demand charge, with a more reasonable balance in the assignment of fixed costs, could provide a greater incentive for customers to reserve only capacity rights actually needed. Such a shift also could prevent situations where firm customers are able to understate D–2 volumes and maintain a firm claim on pipeline capacity by paying relatively modest demand charges, by comparison to the real value of the firm service. (Cite to the *Tennessee, et al.* line of cases on D–2 nominations). One possible approach to respond to these concerns would be a return to the straight, as opposed to modified, fixed-variable allocation and rate design methodology. Other methodologies might conceivably address these concerns. However specifically resolved and addressed, the Commission intends that future demand and commodity charge allocation methodology should affirmatively remove any incentive for the uneconomic "hoarding" of firm capacity rights and otherwise ensure that demand costs are fairly allocated to customers on the basis of their respective contract demand.

6. Capacity Adjustments

A. Comment

The concept of CD reduction has been added to the order on page 12, but only in a fleeting way. Some embellishment should be added to ensure that there is no ambiguity about the message.

B. Recommendation

Insert the following after the new sentence (first full one) on page 12:

The Commission believes that the use of contract demand conversion without contract demand reduction would not support any significant shifting of costs to peak service, because the firm customer would not have a reasonable opportunity to adjust the total firm requirements to reflect current needs and reallocated costs. Additionally, in light of the Commission's intention to remove any identified incentive for firm capacity hoarding and any disincentive to a more economically rational contract demand requirement, contract demand reduction probably is a necessary feature of an adjustment mechanism to provide firm customers with the capability to develop a reasonable firm and interruptible service portfolio as necessary to meet current and projected requirements over time.

7. Discounting

A. Comment

The order addresses the issue of discounting in a manner that appears to be clearly "results oriented," to the effect that there can be *"no disincentive"* to pipelines providing transportation rate discounts. I discussed the issue at the May 17 meeting and continue to believe that the order goes too far. The order effectively gives the pipelines a blank check in its current form, even though the clear intent of Order No. 436 was directly contrary to that result. Ironically, I would guess that at least 50% or more of the current transportation volumes on most pipelines (which nationwide approximate 75% of total throughput) are with discounted rates, because of competition in the marketplace. That's one part of Order No. 436 which has worked reasonably well and it is absurd in the extreme to conclude that current rate treatment is such a disincentive that pipelines must have a blank check, lest they discontinue discounting. Discounting will only be limited or ceased when, and only to the extent that, a pipeline has a competitively advantageous position to allow it to maintain maximum throughput levels at incrementally higher or maximum rates. The Commission must not open the door to understated volumes and, as a result, higher unit rates on such a flimsy analytical and evidentiary basis. To date, in fact, we have had only two related cases on this issue. Discounting is going to continue as a matter of competitive necessity, if not survival, in today's natural gas market. But, that is not a reason to invite the misallocation of costs that inevitably would result from this proposal. We already are confronted with the reality that selective discounting probably provides one of the greatest opportunities for affiliate preferences, which we must address in Order No. 497–A. I see no reason to further compound the discounting problem with potential cross-subsidies and needlessly higher transportation rates for non-affiliated shippers.

As noted, this issue has recurred directly in two specific cases worth some attention. In *CNG Transmission Corporation,* 44 FERC ¶ 61,203 (1988), The pipeline included as a credit to its cost of service $9 million in revenues related to transportation services of 35.5 million dt. The rate proposed to be charged for the transactions was significantly below CNG's proposed generally applicable transportation rate. The Commission rejected CNG's proposal stating that the pipeline "was shifting the cost burden of its transportation discounts from the company to other transportation customers," "regulations promulgated under Order No. 436 were designed to prevent such cross-subsidization," and "CNG would have a competitive advantage over pipelines that are bearing (such cost burden) responsibility." The Commission took the same position in *Questar Pipeline Company,* 43 FERC ¶ 61,127 (1988), but subsequently in its Order Granting In Part Appeal of Staff Action of February 1, 1989, with regard to the compliance filing in the same docket (46 FERC ¶ 61,115 (1989)) decided not to summarily reject a revision of the throughput projection, but rather made reasonableness of the projection an issue in the pending hearing. At the same time, the Commission reiterated the general view that led to the original rejection, and distinguished the revised throughput projection in the compliance filing on the narrow basis that it was arguably consistent with the Commission's prior order, even though it may later prove to be inaccurate or otherwise produce unlawful rates. It is unambiguously clear, therefore, that the Commission's interpretation of Order No. 436 and its consistent practice until today is directly contrary to the plain meaning and obvious result of this section of the policy statement.

While there may be a legitimate question of how to properly allocate historical, discounted volumes in calculating new transportation rates, several key principles of Order No. 436 remain relevant and applicable. First, the pipeline must remain at risk without question for the revenue results of discounting under any given rate structure, including any under-recovery. Second, there cannot be any cross-subsidy of the discounts by rates for other services. The current draft clearly "finesses," if not practically repeals, § 284.7(c)(3), and those key principles of Order No. 436 in the discussion, particularly paragraphs 2 and 3 on page 15 of the slip opinion. Also, although the text makes specific reference to Order

No. 497, the strong impression of the discussion is that there should be no *regulatory* (rate or otherwise) disincentive or impediment to otherwise unconstrained pipeline flexibility to engage in selective discounting for affiliated and non-affiliated shippers. Additionally, all calculations using past discounted volumes must take into account and properly balance/reflect the extent to which such volumes were discounted for affiliated shippers. I also am quite concerned that this feature of the policy statement is intended to lay the ratemaking foundation for the Incentive Rate of Return initiative and also the so called "productivity gain" concept. For all these reasons, I would modify it.

B. Recommendation

Modify the discussion to "neutralize" the statement of the problem *and* the Commission's response to make clear that the principles of Order No. 436 (as well as Order No. 497) will continue to apply, even where there may be a demonstrated need for some flexibility on throughput calculation and the effect of discounted volumes. Remove the "results oriented" discussion and examples memorializing support for cross-subsidies and reduced/eliminated pipeline risk of underrecovery due to discounting, such as under the benefit sharing approach. Require that all calculations of past approach. Require that all calculations of past discounted volumes take into account and properly reflect/balance the extent to which such volumes were discounted for affiliated shippers. (See Appendix for a proposed modified discussion). What evidence (*e.g., CNG, Questar*, the 1988 INGAA report, etc.) exists to support the conclusion that this may be a real world problem which, in fact, requires some generic policy response from the Commission? The current discussion provides no evidentiary or experiential antecedent to the extensive discussion. In effect, what is the need for any attention to discounting in this policy statement in the first place?

8. Maximum Interruptible Rates

A. Comment

The discussion of the 100% load factor method in the order appears to be a retreat from the Commission's most recent pronouncements. The better result would be to establish the general presumption that, all other things being equal, the Commission believes that the current usage of 100% load factor probably is inconsistent today with the reasonable and fair allocation of costs to shippers.

B. Recommendation

On page 17, insert a new sentence after the first sentence of text, as follows:

Based on its review to date, the Commission believes that generally the 100% load factor in current practice probably does not result in a reasonable and fair allocation of costs to shippers, in the absence of other compensating and offsetting adjustments, and today is not consistent with the stated rate objectives of Order No. 436.

9. Mileage-based Rates

A. Comment

The order again appears to retreat from the clear intent of Order No. 436 that rates be mileage based, unless there is an adequate justification for the departure. The NGSA petition, Appendix A, page 7, indicates that 10 major pipelines have implemented large zones approximating postage stamp rates (ANR, Columbia Gulf, El Paso, Natural, Northern, Panhandle, Southern, Transwestern, Trunkline, and United), three others have postage stamp rates (Columbia, Consolidated, and Northwest), and three others have four or more zones (Tennessee, Texas Eastern, Transco). For example, the issue will recur again in cases on the next agenda, with results that are inconsistent with Order No. 436. The point is that the Commission's failure to expressly support this requirement of § 284.7 is tantamount to acquiescence in its continued avoidance by pipelines in cases and settlements.

B. Recommendation

Insert a new paragraph after the text ending with footnote 55 on page 19.

The Commission emphasizes that Order No. 436 intends that rates be reflective of the distance gas is transported. Thus, pipelines generally should implement rates which do not constitute "postage stamp" rates where shippers pay the same charge whether the gas travels one mile or a hundred miles or more. That form of rate discourages alternative and more economically efficient transportation and market approaches, whereas rates based on mileage or small zones will foster competition and encourage the use of the most economically efficient alternative path to market. Thus, a pipeline is required to justify any deviation from rates which directly reflect differences in the distance of the transportation service.

10. Separating Services

A. Comment

The new section on page 20 is an improvement over the original draft, which was virtually silent on unbundling. The discussion, however, is too understated in its current form and, thereby, suggests that the Commission is not totally committed to pursuing the unbundling objective clearly established in Order No. 436. The NGSA petition documents the fact that a significant number of pipelines have not unbundled storage costs, gathering and third party transportation costs (Account No. 858). The issue also comes up repeatedly in pending cases and this would be a timely opportunity to express the Commission's view in support of further unbundling. Also, we should make clear the importance of (1) FT equivalency and (2) the less restricted availability of storage, as we did in the recent *Transco* and *Tennessee* GIC "paper hearing" orders.

B. Recommendation

In the new paragraph on page 20, modify the sentence beginning, "This does not mean * * *." to read as follows:

This does not mean in every case that a bundled rate is necessarily inappropriate. However, the Commission reiterates here the clear objective of Order No. 436 that rates be unbundled for separate services, and costs be allocated fairly to those services. That general result will better ensure that there will be a more efficient use of the pipeline's facilities, that competition of a gas to gas nature will be on a more equal basis, and that the allocation of costs will reflect better the economic value of the services. For example, as a general matter, unbundled rates for gathering, treating, processing, storage, and transmission services will best reflect costs associated with each service and the value of the service to customers. Also, transportation rates generally should not include Account No. 858 costs related to transportation of system supply gas on upstream third party pipelines, since those costs are related solely to the sales service and are incurred only when the pipeline purchases gas for its sales to customers. Similarly, the Commission, as a general matter, has concluded that the transmission element of (1) a pipeline's sales service and (2) its firm transportation service should be functionally equivalent with comparable rate (cite to *Transco/Tennessee*). And, the pipeline should not unjustifiably restrict access to separate storage services provided with appropriately unbundled rates. Thus, the Commission has concluded generally that, unless otherwise justified in a particular rate case applicable to an individual pipeline, Order No. 436 requires pipelines to proceed now to develop rates which reflect this concept of unbundling.

11. Theory-Economic Efficiency

A. Comment

My view on the over-emphasis on economic efficiency in the earlier draft was discussed at the May 17, 1989 Commission Meeting. Suffice it to say that I remain very concerned that there

is an over-emphasis on the theory and the so-called "Commission goal" of allocating capacity (and by inference, other services) to those who value it the highest. That leads potentially to such ill-starred and analytically deceased initiatives as "auctioning" all transmission capacity, for which we have two consultant reports serving as an academic obituary, and the capacity brokering NOPR, where the staff technical conference proved that we could not, as a threshold matter, define the "right" to be brokered in the first instance, thus constituting a *de facto* funeral for the generic initiative. I would not want this "economic efficiency theory" discussion to serve as the Phoenix resurrecting those largely decomposed concepts from the well-deserved ranks of the analytical dead.

B. Recommendation

Interested parties should consider carefully the potential negative implications of this primacy of economic efficiency approach, in terms of today's transportation activities and considerations of equity, fairness and non-discrimination.

12. Order No. 497–A

As the preceding discussion makes abundantly clear, this Policy Statement would increase materially the concerns associated with undue discrimination against non-affiliates and preference for affiliates. The remedy for that increased concern lies in immediate and acceptable action on the rehearing of Order No. 497 including, but certainly not limited to, an extension of the reporting requirement for several years beyond December 31, 1989. We, therefore, should adopt the Policy Statement only if final and favorable action on Order No. 497–A is scheduled promptly.

13. Conclusion

These comments and recommendations are intended to facilitate with specific proposals the improvement of the overall posture of this Policy Statement, in terms of the degree of guidance provided to the parties in these cases and the industry at large. This policy statement provides us with a timely and effective opportunity to redirect pipeline rate design in a much more market-oriented and competitive direction this year. I look forward to reviewing these recommendations further on rehearing. In the end, I hope we can reach agreement to strengthen the guidance along these lines.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

Appendix—Proposed Modified Discussion

4. Discounting and Maximum Interruptible Rates

a. Discounting

Section 284.7(d) requires a pipeline to file maximum and minimum transportation rates for both firm and interruptible service and permits the pipeline to charge rates to customers within the maximum and minimum range. Under this section a pipeline is permitted to discount in order to maximize throughput and thereby benefit customers by spreading fixed cost recovery over more units of service. Section 284.7(c)(3) states the rate objective that "[t]he pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service." [44]

Many have read this requirement to mean that a pipeline must assume in filing its next rate case that the volumes it has transported at discounted rates would still be transported if the maximum rate were charged. In light of the competitive market that has emerged in the gas industry, this assumption is not necessarily a realistic one in every case. Also, it may discourage some pipelines under certain circumstances from discounting their services to some extent in the future to capture marginal firm and interruptible business.

That would occur because the pipeline arguably might not be able to recover its cost-of-service, if the maximum rates are based on the exact throughput achieved by discounting, without any adjustment to reflect the impact of discounts on total throughput. The court in *Associated Gas Distributors* v. *FERC* described this situation and stated that there was no reason to suppose that the Commission intended for a pipeline to calculate prices assuming the carriage of discounted traffic at a fully allocated price.[45] The objective set forth in § 284.7(c)(3) was designed to prevent subsidization of the discounts by the pipelines' non-discounted rates.[46] However, that objective also should take into account Order No. 436's goal of maximizing throughput. Therefore, the Commission will allow parties to develop a record on and explore ways to calculate a pipeline's rates after it has been discounting so as to achieve both objectives as set out in the regulations.

At the outset, however, the Commission reiterates that pipelines must give discounts on a non-discriminatory basis, and the Commission is concerned about selective discounts that have the potential for giving rise to undue discrimination, including discounts to affiliates.[47] The following discussion about how to design the rates does not alter the standards that apply to the Commission's review of a pipeline's decision as to when and how to discount. That is, discounts must be given on a non-discriminatory basis, and discounts to affiliates will be carefully scrutinized,[48] as will be the treatment of past discounts to affiliates in projecting future units of service.

While the Commission will consider some flexibility under § 284.7(c) in terms of adjustments to reflect the impact of discounts (particular discounts for non-affiliated shippers) on total throughput, the Commission emphasizes that there should be no cross-subsidization by sales customers or shippers at maximum rates. And, the pipeline in large measure must still bear the risk of underrecovery as a result of *future* discounts under the *new* maximum rate. Finally, the calculations using past discounted volumes must take into account and properly balance the extent of such volumes discounted for affiliated shippers.

The Commission also recognizes that in a rate case it may be difficult to forecast discounted units of service at particular prices in order to allocate costs to discounted service. For example, discounts may depend on variables, such as the prices of alternative fuels. Accordingly, the ALJs and participants should consider methods which deal with the problem of the difficulty in forecasting revenues from discounting.

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[44] A pipeline's projected units of service may only be changed by the pipeline in a section 4 rate filing. The projected units of service concept involves giving pipelines an incentive to maximize throughput. Selective discounting furthers similar objectives, by allowing pipelines to retain and attract business by meeting competition. Order No. 436, *supra* n. 1 at p. 31,546; Order No. 436–A, [Reg. Preambles 1982–1985] FERC Stats. & Regs. ¶ 30,675 at p. 31,679 (1985).

[45] 824 F.2d 981, 1012 (D.C. Cir. 1987).

[46] *See* Order No. 436, *supra* n. 1 at p. 31,545.

[Docket Nos. CP89-1459-000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certification Filings

May 30, 1989.

Take notice that the following filings have been made with the Commission.

1. United Gas Pipe Line Co.

[Docket No. CP89-1459-000]

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1459-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service on behalf of FRM, Inc. (FRM), an intrastate pipeline company, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated March 8, 1989, United proposed to transport up to 15, 450 MMBtu of natural gas per day, on an interruptible basis, for FRM. United states that such gas would be transported from various existing receipt points along its system in Louisiana and Mississippi to an existing delivery point in Lawrence County, Mississippi. FRM has informed United that it expects to have the full 15,450 MMBtu transported on an average day, and, based thereon, estimates that the annual transportation quantity would be 5,639,250 MMBtu. United advises that the transportation service commenced on March 12, 1989, as reported in Docket No. ST89-3413-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1372-000]

Take notice that on May 15, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1372-000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88-328-000 for authorization to provide gas for Sonat Marketing Company (Shipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 160,000 dt; on an average day would be 16,500 dt; and on an annual basis would be 6,022,500 dt.

Transco states that it would receive the gas at various existing receipt points in Onshore and Offshore Louisiana and Texas and onshore Mississippi and deliver the gas at various existing delivery points in Georgia, and South Carolina.

Transco also states that it would construct no new facilities in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced April 10, 1989, pursuant to the 120-day automatic authorization in Docket No. ST89-3388.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corp.

[Docket No. CP89-1431-000]

Take notice that on May 18, 1989, Mississippi River Transmission Corporation (MRT), (9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP89-1431-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a delivery point to one of its existing firm sales customers, Arkansas Louisiana Gas Company (ALG), under the certificate issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request filed with the Commission and open to public inspection.

MRT proposes to establish the new delivery point by installing a tap and appurtenant facilities including a 2" meter and regulator station to be located within MRT's existing right-of-way, and right-of-way it is in the process of acquiring, on its mainline system in Randolph County, Arkansas. It is stated that ALG requires the delivery of gas at the proposed location to serve the City of O'Kean, Arkansas. MRT also states that it would supply 45 Mcf of natural gas on a peak day and 12,640, Mcf of natural gas on an annual basis at the proposed delivery point. It is estimated that the total for all costs associated with the installation of the proposed facilities would be $30,000. MRT states that ALG would reimburse it for all costs associated with the installation of these facilities and the application filing fee.

MRT states that its FERC Traffic does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. MRT states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to ALG.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP89-1486-000]

Take notice that on May 22, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1486-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Portland General Electric Company (P-G), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 120,000 MMBtu of natural gas on a peak day, 71,000 MMBtu on an average day and 26,000,000 MMBtu on an annual basis for P-G. Northwest states that it would perform the transportation service for P-G under Northwest's Rate Schedule TI-1 for a primary term continuing until April 1, 1993, and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from any transportation receipt point on its system to any transportation delivery point on its system.

It is explained that the service has commenced under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3470-000. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Co.

[Docket No. CP89-1505-000]

Take notice that on May 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1505-000

a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Dow Chemical Company (Dow), an end-user, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 50,293 MMBtu of natural gas on a peak day, 50,293 MMBtu on an average day and 18,356,945 MMBtu on an annual basis for Dow. United states that it would perform the transportation service for Dow under United's Rate Schedule ITS. United indicates that it would transport the gas from a receipt point in Biennville Parish, Louisiana to a delivery point located in Lafeyette Parish, Louisiana.

It is explained that the service has commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3127. United Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–13433 Filed 6–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. C162–600–001 et al.]

BP Exploration Inc., et al.; Applications for Abandonment of Service and Amendment of Certificate [1]

June 1, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon service or to amend a certificate as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 19, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Filing Code

A—Initial Service.
B—Abandonment.
C—Amendment to add acreage.
D—Assignment of acreage.
E—Succession.
F—Partial Succession.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and Date filed	Applicant	Purchaser and Location	Description
C162–600–001, B, 5–8–89	BP Exploration Inc., P. O. Box 4587, Houston TX 77210.	El Paso Natural Gas Company, Shackelford Spraberry Field, Reagan and Upton Counties, Texas.	El Paso is no longer able to take casinghead gas from various tracts in the Shackleford Spraberry Unit because of increased hydrogen sulfide levels that cannot be processed through the El Paso plant.
C188–150–002, C, 5–15–89	Conoco Inc., P. O. Box 2197, Houston, TX 77252.	Tennessee Gas Pipeline Company, South Timbalier Blocks, 22, 23 and 27, Offshore, Louisiana.	Application to add gas-well-gas pursuant to a contract amendment dated 11–29–88.

[FR Doc. 89–13480 Filed 6–6–89; 8:45 am]

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[Docket No. ST89–2913–000]

Sea Robin Pipeline Co.; Self-Implementing Transactions

June 1, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before June 20, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST89-2913	Sea Robin Pipeline Co	Seagull Louisiana Intra. Pipeline Co	04-03-89	B		
ST89-2914	Sea Robin Pipeline Co	First Energy Corp	04-03-89	G-S		
ST89-1915	Sea Robin Pipeline Co	Neches Gas Distribution Co	04-03-89	B		
ST89-2916	Tennessee Gas Pipeline Co	Summit Pipeline & Producing Co	04-03-89	G-S		
ST89-2918	Natural Gas Pipeline Co. of America	Associated Intrastate Pipeline Co	04-03-89	B		
ST89-2919	United Gas Pipe Line Co	Atlanta Gas Light Co., et al.	04-03-89	B		
ST89-2920	Enogex Inc	Phillips Gas Pipeline Co	04-03-89	C	08-31-89	26.50
ST89-2921	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	04-03-89	C		
ST89-2922	Valero Transmission, L.P	Trunkline Gas Co	04-03-89	C		
ST89-2923	Algonquin Gas Transmission Co	Bay State Gas Co	04-03-89	B		
ST89-2924	Algonquin Gas Transmission Co	Connecticut Light & Power Co	04-03-89	B		
ST89-2925	Algonquin Gas Transmission Co	Colonial Gas Company	04-03-89	B		
ST89-2926	United Gas Pipe Line Co	Atlanta Gas Light Co., et al	04-03-89	B		
ST89-2927	United Gas Pipe Line Co	Associated Intrastate P/L Co., et al	04-03-89	B		
ST89-2928	United Gas Pipe Line Co	Reliance Pipeline Co	04-03-89	B		
ST89-2929	United Gas Pipe Line Co	Vista Chemical Co	04-03-89	G-S		
ST89-2930	United Gas Pipe Line Co	Louisiana Power & Light Co	04-03-89	B		
ST89-2931	United Gas Pipe Line Co	Acadian Gas Pipeline System	04-03-89	B		
ST89-2932	Michigan Gas Storage Co	Consumers Power Co	04-03-89	B		
ST89-2933	Michigan Gas Storage Co	Consumers Power Co	04-03-89	B		
ST89-2934	Northwest Pipeline Corp	Chevron U.S.A., Inc	04-03-89	G-S		
ST89-2935	Columbia Gulf Transmission Co	Texas Gas Transmission Corp	04-03-89	G		
ST89-2936	Northern Natural Gas Co	American Central Gas Marketing Co	04-03-89	G-S		
ST89-2937	Northern Natural Gas Co	Phillips Natural Gas Co	04-03-89	B		
ST89-2938	Kentucky West Virginia Gas Co	Equitable Gas Co	04-04-89	B		
ST89-2939	Natural Gas Pipeline Co. of America	Cabot Gas Supply Corp	04-04-89	B		
ST89-2940	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	04-04-89	G-S		
ST89-2941	ONG Transmission Co	Northern Natural Gas Co	04-04-89	C	09-01-89	24.32
ST89-2942	Transwestern Pipeline Co	Southern California Gas Co	04-04-89	B		
ST89-2943	Arkla Energy Resources	Entex, Inc	04-04-89	B		
ST89-2944	Tennessee Gas Pipeline Co	Louisiana Intrastate Gas Pipeline Corp	04-03-89	B		
ST89-2945	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	04-05-89	C		
ST89-2946	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-04-89	G-S		
ST89-2947	Texas Gas Transmission Corp	Wintershall Corp	04-04-89	G-S		
ST89-2948	Sun Gas Transmission Co., Inc	Tennessee Gas Pipeline Co	04-05-89	C		
ST89-2949	Louisiana Intrastate Gas Corp	Trunkline Gas Co	04-05-89	C	09-02-89	27.44
ST89-2950	Transwestern Pipeline Co	Enron Gas Marketing, Inc	04-05-89	G-S		
ST89-2951	Transwestern Pipeline Co	Mobil Natural Gas, Inc	04-05-89	G-S		
ST89-2952	Transcontinental Gas Pipe Line Corp	Coastal Gas Marketing Co	04-06-89	G-S		
ST89-2953	Transcontinental Gas Pipe Line Corp	Bay State Gas Co., et al	04-06-89	B		
ST89-2954	United Gas Pipe Line Co	Pontchartrain Natural Gas System	04-05-89	B		
ST89-2955	United Gas Pipe Line Co	Centran Corp	04-05-89	G-S		
ST89-2956	Northwest Pipe Line Corp	Enron Oil & Gas Co	04-06-89	G-S		
ST89-2957	CNG Transmission Corp	Peoples Natural Gas Co	04-06-89	B		
ST89-2958	CNG Transmission Corp	Peoples Natural Gas Co	04-06-89	B		
ST89-2959	CNG Transmission Corp	Gulf Ohio Corp	04-06-89	G-S		
ST89-2960	Panhandle Eastern Pipe Line Co	Marathon Oil Co	04-05-89	G-S		
ST89-2961	CNG Transmission Corp	Catamount Natural Gas, Inc	04-06-89	G-S		
ST89-2962	CNG Transmission Corp	Kogas Inc	04-06-89	G-S		
ST89-2963	CNG Transmission Corp	Kogas Inc	04-06-89	G-S		
ST89-2964	CNG Transmission Corp	Kogas Inc	04-06-89	G-S		
ST89-2965	Texas Eastern Transmission Corp	Allied Gas Co	04-06-89	B		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST89-2966	Texas Eastern Transmission Corp	Boston Gas Co	04-06-89	B		
ST89-2967	Texas Eastern Transmission Corp	Commonwealth Gas Co	04-06-89	B		
ST89-2968	Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	04-06-89	B		
ST89-2969	Texas Eastern Transmission Corp	Reliance Pipeline Co	04-06-89	B		
ST89-2970	Northern Border Pipeline Co	Northern Natural Gas Co	04-07-89	G		
ST89-2971	El Paso Natural Gas Co	NGC Intrastate Pipeline Co	04-07-89	B		
ST89-2972	El Paso Natural Gas Co	Gulf Gas Utilities Co	04-07-89	B		
ST89-2973	Transcontinental Gas Pipe Line Corp	City of Bessemer City	04-07-89	B		
ST89-2974	Texas Gas Transmission Corp	Seagull Marketing Services, Inc.	04-07-89	G-S		
ST89-2975	Texas Gas Transmission Corp	Central Illinois Public Service Co	04-07-89	B		
ST89-2976	Texas Gas Transmission Corp	TXG Gas Marketing Co	04-07-89	G-S		
ST89-2977	Texas Gas Transmission Corp	Proctor & Gamble Co	04-07-89	G-S		
ST89-2978	Texas Gas Transmission Corp	Special Metals Corp	04-07-89	G-S		
ST89-2979	Texas Gas Transmission Corp	Nestle Foods Corp	04-07-89	G-S		
ST89-2980	United Gas Pipe Line Co	Laser Marketing Co	04-07-89	G-S		
ST89-2981	United Gas Pipe Line Co	Boston Gas Co., et al	04-07-89	B		
ST89-2982	United Gas Pipe Line Co	Phoenix Gas Pipeline Co	04-07-89	G-S		
ST89-2983	United Gas Pipe Line Co	Sun Operating Limited Partnership	04-07-89	G-S		
ST89-2984	United Gas Pipe Line Co	Marathon Oil Co	04-07-89	G-S		
ST89-2985	United Gas Pipe Line Co	South Carolina Gas Pipeline Corp	04-07-89	B		
ST89-2986	Sea Robin Pipeline Co	Connecticut Natural Gas Corp	04-07-89	B		
ST89-2987	Sea Robin Pipeline Co	United Gas Pipe Line Co	04-07-89	G		
ST89-2988	United Gas Pipe Line Co	Laser Marketing Co	04-07-89	G-S		
ST89-2989	United Gas Pipe Line Co	Coastal States Gas Transmission Co	04-07-89	B		
ST89-2990	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	04-10-89	C		
ST89-2991	Delhi Gas Pipeline Corp	Texas Gas Transmission Corp	04-10-89	C		
ST89-2992	Delhi Gas Pipeline Corp	Texas Gas Transmission Corp	04-10-89	C		
ST89-2993	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	04-10-89	C		
ST89-2994	Natural Gas Pipeline Co. of America	TXG Gas Marketing Co	04-10-89	G-S		
ST89-2995	Tennessee Gas Pipeline Co	North Penn Gas Co	04-10-89	B		
ST89-2996	Tennessee Gas Pipeline Co	Boston Gas Co	04-10-89	B		
ST89-2997	El Paso Natural Gas Co	Amoco Gas Co	04-10-89	B		
ST89-2998	El Paso Natural Gas Co	Southern California Gas Co	04-10-89	G-S		
ST89-2999	El Paso Natural Gas Co	Amoco Gas Co	04-10-89	B		
ST89-3000	Sun Gas Transmission Co., Inc	Transcontinental Gas Pipe Line Corp	04-10-89	C		
ST89-3001	Transcontinental Gas Pipe Line Corp	Loutex Energy, Inc	04-10-89	G-S		
ST89-3002	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	04-10-89	G-S		
ST89-3003	Transcontinental Gas Pipe Line Corp	Enron Gas Marketing, Inc	04-10-89	G-S		
ST89-3004	Panhandle Eastern Pipe Line Co	Union Pacific Resources Co	04-10-89	G-S		
ST89-3005	Columbia Gulf Transmission Co	Consolidated Edison Co. of NY, Inc	04-10-89	B		
ST89-3006	Columbia Gulf Transmission Co	Peoples Gas Light & Coke Co	04-10-89	B		
ST89-3007	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	04-11-89	C		
ST89-3008	Valero Transmission, L.P	Texas Eastern Transmission Corp	04-11-89	C		
ST89-3009	Trunkline Gas Co	PSI, Inc	04-10-89	G-S		
ST89-3010	Texas Gas Transmission Corp	PPG Industries, Inc	04-11-89	G-S		
ST89-3011	Tennessee Gas Pipeline Co	Capitol Dist. Energy Ctr. Cogen. Assoc	04-11-89	G-S		
ST89-3012	Texas Gas Transmission Corp	PPG Industries, Inc	04-11-89	G-S		
ST89-3013	Texas Gas Transmission Corp	PPG Industries, Inc.	04-11-89	G-S		
ST89-3014	Texas Gas Transmission Corp	PPG Industries, Inc	04-11-89	G-S		
ST89-3015	Texas Gas Transmission Corp	PPG Industries, Inc	04-11-89	G-S		
ST89-3016	Northwest Pipeline Corp	Conoco, Inc	04-11-89	G-S		
ST89-3017	Natural Gas Pipeline Co. of America	Texas Gas Marketing, Inc	04-12-89	G-S		
ST89-3018	Tennessee Gas Pipeline Co	North Penn Gas Co	04-12-89	B		
ST89-3019	Transcontinental Gas Pipe Line Corp	Entrade Corp	04-12-89	G-S		
ST89-3020	Texas Gas Transmission Corp	PPG Industries, Inc	04-12-89	G-S		
ST89-3021	Texas Gas Transmission Corp	PPG Industries, Inc	04-12-89	G-S		
ST89-3022	Texas Gas Transmission Corp	PPG Industries, Inc	04-12-89	G-S		
ST89-3023	Texas Gas Transmission Corp	PPG Industries, Inc	04-12-89	G-S		
ST89-3024	Texas Gas Transmission Corp	PPG Industries, Inc	04-12-89	G-S		
ST89-3025	United Gas Pipe Line Co	Sandy Hook Pipeline Inc	04-12-89	B		
ST89-3026	Tennessee Gas Pipeline Co	Heath Petra Resources, Inc	04-13-89	G-S		
ST89-3027	Tennessee Gas Pipeline Co	LL & E Gas Marketing, Inc	04-13-89	G-S		
ST89-3028	Texas Eastern Transmission Corp	Dayton Power and Light Co	04-13-89	B		
ST89-3029	ONG Transmission Co	Northern Natural Gas Co	04-13-89	C	09-10-89	24.32
ST89-3030	ONG Transmission Co	Williams Natural Gas Co	04-13-89	C	09-10-89	24.32
ST89-3031	ONG Transmission Co	Williams Natural Gas Co	04-13-89	C	09-10-89	24.32
ST89-3032	BP Gas Transmission Co	ANR Pipeline Co., et al	04-14-89	C	09-11-89	13.70
ST89-3033	Tennessee Gas Pipeline Co	Channel Industries Gas Co	04-14-89	B		
ST89-3034	Transwestern Pipeline Co	Exxon Corp	04-17-89	G-S		
ST89-3035	Transcontinental Gas Pipe Line corp	City of Bessemer City	04-14-89	B		
ST89-3036	Sea Robin Pipeline Co	Ponchartrain Natural Gas System, et al	04-14-89	B		
ST89-3037	Southern Natural Gas Co	Stone Container Corp	04-14-89	G-S		
ST89-3038	Southern Natural Gas Co	Union Texas Products Corp	04-14-89	G-S		
ST89-3039	Southern Natural Gas Co	BP Gas Inc	04-14-89	G-S		
ST89-3040	Southern Natural Gas Co	Stone Container Corp	04-14-89	G-S		
ST89-3041	United Gas Pipe Line Co	Cornerstone Natural Gas Co	04-14-89	B		
ST89-3042	United Gas Pipe Line Co	Mississippi Fuel Co	04-14-89	B		
ST89-3043	United Gas Pipe Line Co	Entrade Corp	04-14-89	G-S		
ST89-3044	United Gas Pipe Line Co	Houston Gas Exchange Corp	04-14-89	G-S		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST89-3045	United Gas Pipe Line Co	Mobil Natural Gas, Inc	04-14-89	G-S		
ST89-3046	United Gas Pipe Line Co	Laser Marketing Co	04-14-89	G-S		
ST89-3047	Southern Natural Gas Co	Citizens Gas Supply Corp	04-14-89	G-S		
ST89-3048	BP Gas Transmission Co	Panhandle Eastern P/L Co., et al	04-17-89	C	09-14-89	28.80
ST89-3049	United Texas Transmission Co	Tennessee Gas Pipeline Co	04-17-89	C		
ST89-3050	Monterey Pipeline Co	Trunkline Gas Co., et al	04-17-89	C	09-14-89	24.40
ST89-3051	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	04-17-89	B		
ST89-3052	Superior Offshore Pipeline Co	LGS Intrastate, Inc	04-17-89	B		
ST89-3053	Tennessee Gas Pipeline Co	Centran Corp	04-17-89	G-S		
ST89-3054	Natural Gas Pipeline Co. of America	Mitchell Marketing Co	04-17-89	G-S		
ST89-3055	Natural Gas Pipeline Co. of America	Sun Gas Transmission, L.P	04-17-89	G-S		
ST89-3056	Texas Eastern Transmission Corp	Philadelphia Electric Co	04-17-89	B		
ST89-3057	Texas Eastern Transmission Corp	Union Electric Co	04-17-89	B		
ST89-3058	Texas Eastern Transmission Corp	UGI Corp	04-17-89	B		
ST89-3059	Texas Eastern Transmission Corp	City of Anna	04-17-89	B		
ST89-3060	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	04-17-89	B		
ST89-3061	Texas Eastern Transmission Corp	Creole Gas Pipeline Co	04-17-89	B		
ST89-3062	Texas Eastern Transmission Corp	Access Energy Pipeline Co	04-17-89	B		
ST89-3063	Williston Basin Interstate P/L Co	MGTC, Inc	04-17-89	B		
ST89-3064	Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	04-17-89	B		
ST89-3065	Williston Basin Interstate P/L Co	Northwestern Public Service Co	04-17-89	B		
ST89-3066	Williston Basin Interstate P/L Co	Quivira Gas Co	04-17-89	B		
ST89-3067	Williston Basin Interstate P/L Co	MGTC, Inc	04-17-89	B		
ST89-3068	Williston Basin Interstate P/L Co	Quivira Gas Co	04-17-89	B		
ST89-3069	Northwest Pipeline Corp	Meridian Oil Trading, Inc	04-17-89	G-S		
ST89-3070	Northwest Pipeline Corp	BP Gas Marketing Co	04-17-89	G-S		
ST89-3071	Texas Eastern Transmission Corp	Philadelphia Electric Co	04-17-89	B		
ST89-3072	Texas Eastern Transmission Corp	Elizabethtown Gas Co	04-17-89	B		
ST89-3073	Texas Eastern Transmission Corp	Connecticut Light & Power Co	04-17-89	B		
ST89-3074	Texas Eastern Transmission Corp	UGI Corp	04-17-89	B		
ST89-3075	Enogex Inc	Natural Gas Pipeline Co. of America	04-18-89	C	09-15-89	28.50
ST89-3076	Columbia Gulf Transmission Co	Columbia Gas of Kentucky, Inc	04-18-89	B		
ST89-3077	Colorado Interstate Gas Co	NGC Intrastate Pipeline Co	04-18-89	B		
ST89-3078	Northwest Pipeline Corp	BP Gas Marketing Co	04-18-89	G-S		
ST89-3079	Northwest Pipeline Corp	Boise Cascade Corp	04-18-89	G-S		
ST89-3080	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	04-18-89	B		
ST89-3081	Natural Gas Pipeline Co. of America	Superior Natural Gas Corp., et al	04-18-89	G-S		
ST89-3082	Texas Eastern Transmission Corp	United Cities Gas Co	04-18-89	B		
ST89-3083	Texas Eastern Transmission Corp	Seagull Shoreline System	04-18-89	B		
ST89-3084	ONG Transmission Co	Northern Natural Gas Co	04-19-89	C	09-16-89	24.32
ST89-3085	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	04-19-89	B		
ST89-3086	Panhandle Eastern Pipe Line Co	City of Pleasant Hill	04-19-89	G-S		
ST89-3087	Natural Gas Pipeline Co. of America	Texas Industrial Energy Co	04-19-89	B		
ST89-3088	United Gas Pipe Line Co	Gulf Coast Energy, Inc	04-19-89	B		
ST89-3089	United Gas Pipe Line Co	Centran Corp	04-19-89	G-S		
ST89-3090	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	04-19-89	B		
ST89-3091	Texas Eastern Transmission Corp	Woodward Pipeline, Inc	04-19-89	B		
ST89-3092	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	04-19-89	B		
ST89-3093	Texas Eastern Transmission Corp	Philadelphia Electric Co	04-19-89	B		
ST89-3094	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	04-19-89	B		
ST89-3095	United Gas Pipe Line Co	Catamount Natural Gas, Inc	04-20-89	G-S		
ST89-3096	United Gas Pipe Line Co	Amalgamated Pipeline Co	04-20-89	B		
ST89-3097	United Gas Pipe Line Co	Graham Energy Marketing Corp	04-20-89	G-S		
ST89-3098	Texas Eastern Transmission Corp	BP Gas Transmission Co	04-20-89	B		
ST89-3099	Valero Transmission, L.P	Tennessee Gas Pipeline Co	04-20-89	C		
ST89-3100	Tennessee Gas Pipeline Co	Oxy U.S.A., Inc	04-20-89	G-S		
ST89-3101	ONG Transmission Co	Panhandle Eastern Pipe Line Co	04-20-89	C	09-17-89	24.32
ST89-3102	ONG Transmission Co	Williams Natural Gas Co	04-20-89	C	09-17-89	24.32
ST89-3103	Webb/Duval Gatherers	Tennessee Gas Pipeline Co	04-21-89	C		
ST89-3104	Texas Gas Transmission Corp	Indiana Gas Co	04-21-89	B		
ST89-3105	Texas Gas Transmission Corp	Total Minatorne Corp	04-21-89	G-S		
ST89-3106	Texas Gas Transmission Corp	IP Investment Holdings, Ltd	04-21-89	B		
ST89-3107	Texas Gas Transmission Corp	Memphis Light, Gas and Water Division	04-21-89	B		
ST89-3108	Texas Gas Transmission Corp	Washington Gas Light Co	04-21-89	B		
ST89-3109	Texas Gas Transmission Corp	Union Texas Petroleum Corp	04-21-89	G-S		
ST89-3110	Texas Gas Transmission Corp	Midwest Natural Gas Corp	04-21-89	B		
ST89-3111	Panhandle Eastern Pipe Line Co	City of Clarence	04-21-89	G-S		
ST89-3112	Panhandle Eastern Pipe Line Co	City of Edinburg	04-21-89	G-S		
ST89-3113	Panhandle Eastern Pipe Line Co	City of Fulton	04-21-89	G-S		
ST89-3114	Panhandle Eastern Pipe Line Co	City of Macon	04-21-89	G-S		
ST89-3115	Transcontinental Gas Pipe Line Corp	Corpus Christi Transmission Co	04-21-89	B		
ST89-3116	Transcontinental Gas Pipe Line Corp	Catamount Natural Gas, Inc	04-21-89	G-S		
ST89-3117	Transcontinental Gas Pipe Line Corp	UGI Corp	04-21-89	B		
ST89-3118	Transcontinental Gas Pipe Line Corp	TBG Cogen Partners, Inc	04-21-89	G-S		
ST89-3119	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	04-21-89	B		
ST89-3120	Northern Natural Gas Co	V.H.C. Pipeline Co	04-21-89	B		
ST89-3121	United Texas Transmission Co	Transcontinental Gas Pipe Line Corp	04-21-89	C		
ST89-3122	United Texas Transmission Co	Neches Gas Distribution Co	04-21-89	C		
ST89-3123	Palo Duro Pipeline Co., Inc	Natural Gas Pipeline Co. of America	04-21-89	C		

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ST89-3124	Colorado Interstate Gas Co	Llano, Inc	04-21-89	B		
ST89-3125	Colorado Interstate Gas Co	Santa Fe Minerals	04-21-89	G-S		
ST89-3126	Colorado Interstate Gas Co	Santa Fe Minerals	04-21-89	G-S		
ST89-3127	United Gas Pipe Line Co	Dow Chemical Co	04-21-89	G-S		
ST89-3128	Columbia Gulf Transmission Co	Baltimore Gas and Electric Co	04-21-89	B		
ST89-3129	Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	04-21-89	G		
ST89-3130	Nueces Co	Colorado Interstate Gas Co	04-24-89	C	09-21-89	38.81
ST89-3131	Paiute Pipeline Co	Ceasars Tahoe	04-24-89	G-S		
ST89-3132	Transcontinental Gas Pipe Line Corp	Brooklyn Interstate Natural Gas Corp	04-24-89	G-S		
ST89-3133	Transcontinental Gas Pipe Line Corp	Indiana Gas Co., et al	04-24-89	B		
ST89-3134	Transcontinental Gas Pipe Line Corp	Enron Gas Marketing, Inc	04-24-89	G-S		
ST89-3135	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	04-24-89	G		
ST89-3136	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	04-24-89	G		
ST89-3137	Northwest Pipeline Corp	Natgas U.S. Inc	04-24-89	G-S		
ST89-3138	Northwest Pipeline Corp	Ceasars World, Inc	04-24-89	G-S		
ST89-3139	Northwest Pipeline Corp	Southwest Gas Corp	04-24-89	G-S		
ST89-3140	Colorado Interstate Gas Co	Questar Energy Co	04-24-89	G-S		
ST89-3141	Colorado Interstate Gas Co	Marathon Oil Co	04-24-89	G-S		
ST89-3142	Northern Natural Gas Co	Panda Resources, Inc	04-24-89	G-S		
ST89-3143	Stingray Pipeline Co	Anadarko Trading Co	04-24-89	K-S		
ST89-3144	Stingray Pipeline Co	Shell Gas Trading Co	04-24-89	K-S		
ST89-3145	Stingray Pipeline Co	Chevron U.S.A., Inc	04-24-89	K-S		
ST89-3146	Stingray Pipeline Co	Tejas Power Corp	04-24-89	K-S		
ST89-3147	Stingray Pipeline Co	ARCO Natural Gas Marketing, Inc	04-24-89	K-S		
ST89-3148	Stingray Pipeline Co	Hadson Gas Systems, Inc	04-24-89	K-S		
ST89-3149	Stingray Pipeline Co	PSI, Inc	04-24-89	K-S		
ST89-3150	Stingray Pipeline Co	Bridgeline Gas Distribution Co	04-24-89	B		
ST89-3151	Stingray Pipeline Co	Dow Intrastate Gas Co	04-24-89	B		
ST89-3152	Stingray Pipeline Co	Enron Gas Marketing, Inc	04-24-89	K-S		
ST89-3153	Stingray Pipeline Co	Williams Gas Marketing Co	04-24-89	K-S		
ST89-3154	Stingray Pipeline Co	Sun Operating Limited Partnership	04-24-89	K-S		
ST89-3155	Trunkline Gas Co	Manville Sales Corp	04-24-89	G-S		
ST89-3156	Trunkline Gas Co	Bethlehem Steel Corp	04-24-89	G-S		
ST89-3157	Trunkline Gas Co	Natural Gas Clearinghouse, Inc	04-24-89	G-S		
ST89-3158	Trunkline Gas Co	Heartland Gas Marketing, Inc	04-24-89	G-S		
ST89-3159	Trunkline Gas Co	PSI, Inc	04-24-89	G-S		
ST89-3160	Trunkline Gas Co	Seagull Marketing Services, Inc	04-24-89	G-S		
ST89-3161	Trunkline Gas Co	Manville Sales Corp	04-24-89	G-S		
ST89-3162	Panhandle Eastern Pipe Line Co	City of Shelbina	04-24-89	G-S		
ST89-3163	Panhandle Eastern Pipe Line Co	Gas Energy Development	04-24-89	G-S		
ST89-3164	Panhandle Eastern Pipe Line Co	Natural Gas Clearinghouse, Inc	04-24-89	G-S		
ST89-3165	Panhandle Eastern Pipe Line Co	Seiling Public Works Auth	04-24-89	G-S		
ST89-3166	Panhandle Eastern Pipe Line Co	Illinois Power Co	04-25-89	B		
ST89-3167	Panhandle Eastern Pipe Line Co	City of Vici Public Works Auth	04-24-89	G-S		
ST89-3168	Panhandle Eastern Pipe Line Co	City of Hermann	04-24-89	G-S		
ST89-3169	Panhandle Eastern Pipe Line Co	City of Roodhouse	04-24-89	G-S		
ST89-3170	Panhandle Eastern Pipe Line Co	Manville Sales Corp	04-24-89	G-S		
ST89-3171	Panhandle Eastern Pipe Line Co	Bethlehem Steel Corp	04-24-89	G-S		
ST89-3172	Panhandle Eastern Pipe Line Co	Manville Sales Corp	04-24-89	G-S		
ST89-3173	Panhandle Eastern Pipe Line Co	City of Stonington	04-24-89	G-S		
ST89-3174	Panhandle Eastern Pipe Line Co	PSI, Inc	04-24-89	G-S		
ST89-3175	Panhandle Eastern Pipe Line Co	City of Bushnell	04-24-89	G-S		
ST89-3176	Panhandle Eastern Pipe Line Co	City of Taloga	04-24-89	G-S		
ST89-3177	Panhandle Eastern Pipe Line Co	American Central Gas Marketing Co	04-24-89	G-S		
ST89-3178	Panhandle Eastern Pipe Line Co	Panhandle Trading Co	04-24-89	G-S		
ST89-3179	Panhandle Eastern Pipe Line Co	City of Paris	04-24-89	G-S		
ST89-3180	Panhandle Eastern Pipe Line Co	City of Perry	04-24-89	G-S		
ST89-3181	Panhandle Eastern Pipe Line Co	City of Rossville	04-24-89	G-S		
ST89-3182	Panhandle Eastern Pipe Line Co	City of Westville	04-24-89	G-S		
ST89-3183	Panhandle Eastern Pipe Line Co	Indiana Gas Co	04-25-89	B		
ST89-3184	Panhandle Eastern Pipe Line Co	Miami Pipeline Co	04-25-89	B		
ST89-3185	Panhandle Eastern Pipe Line Co	Consumers Power Co	04-25-89	B		
ST89-3186	Panhandle Eastern Pipe Line Co	United Cities Gas Co	04-25-89	B		
ST89-3187	Panhandle Eastern Pipe Line Co	City of Winchester	04-25-89	B		
ST89-3188	Panhandle Eastern Pipe Line Co	Indiana Gas Co	04-25-89	B		
ST89-3189	Eastex Gas Transmission Co	Panhandle Eastern Pipe Line Co	04-25-89	B		
ST89-3190	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	04-25-89	B		
ST89-3191	Northern Natural Gas Co	Pacific Resources Co	04-25-89	G-S		
ST89-3192	Louisiana Resources Co	Louisiana Gas Marketing Co	04-25-89	C	09-22-89	26.43
ST89-3193	Tennessee Gas Pipeline Co	CNG Transmission Corp	04-25-89	G		
ST89-3194	El Paso Natural Gas Co	Houston Pipe Line Co	04-25-89	B		
ST89-3195	Equitrans, Inc	Equitable Gas Co	04-26-89	B		
ST89-3196	Equitrans, Inc	Equitable Gas Co	04-26-89	B		
ST89-3197	Valero Transmission, L.P	Natural Gas Pipeline Co. of America	04-26-89	C		
ST89-3198	Channel Industries Gas Co	THC Pipeline Co	04-26-89	C		
ST89-3199	Tennessee Gas Pipeline Co	Enmark Gas Corp	04-26-89	G-S		
ST89-3200	Stingray Pipeline Co	Apache Corp	04-26-89	K-S		
ST89-3201	Stingray Pipeline Co	Texaco Gas Marketing, Inc	04-26-89	K-S		
ST89-3202	Stingray Pipeline Co	Elf Aquitaine, Inc	04-26-89	K-S		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST89-3203	Stingray Pipeline Co	Panhandle Trading Co	04-26-89	K-S		
ST89-3204	Stingray Pipeline Co	Transaco Energy Marketing Co	04-26-89	K-S		
ST89-3205	Stingray Pipeline Co	Bishop Pipeline Corp	04-26-89	B		
ST89-3206	Stingray Pipeline Co	Associated Natural Gas Co., Inc	04-26-89	K-S		
ST89-3207	Stingray Pipeline Co	Pontchartrain Natural Gas System	04-26-89	B		
ST89-3208	Stingray Pipeline Co	Consolidated Fuel Corp	04-26-89	K-S		
ST89-3209	Stingray Pipeline Co	Century Offshore Management Corp	04-26-89	K-S		
ST89-3210	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	04-26-89	G		
ST89-3211	United Gas Pipe Line Co	Phoenix Gas Pipeline Co	04-26-89	G-S		
ST89-3212	Sea Robin Pipeline Co	SNG Intrastate Pipeline, Inc	04-26-89	B		
ST89-3213	Sea Robin Pipeline Co	Cullman—Jefferson Countries Gas Dist	04-26-89	B		
ST89-3214	Stingray Pipeline Co	Mobil Natural Gas, Inc	04-26-89	K-S		
ST89-3215	Gas Co. of NM (Div. Public Serv. Co. NM).	El Paso Natural Gas Co	04-27-89	G-HT		
ST89-3216	Gas Co. of NM (Div. Public Serv. Co. NM).	El Paso Natural Gas Co	04-27-89	G-HT		
ST89-3217	Monterey Pipeline Co	Trunkline Gas Co., et al	04-27-89	C	09-24-89	24.40
ST89-3218	Channel Industries Gas Co	Northern Natural Gas Co	04-27-89	C		
ST89-3219	United Texas Transmission Co	United Gas Pipe Line Co	04-27-89	C		
ST89-3220	BP Gas Transmission Co	ANR Pipeline Co., et al	04-27-89	C	09-24-89	13.70
ST89-3221	BP Gas Transmission Co	ANR Pipeline Co., et al	04-27-89	C	09-24-89	13.70
ST89-3222	Sea Robin Pipeline Co	Ecee, Inc	04-27-89	G-S		
ST89-3223	United Gas Pipe Line Co	Brandywine Industrial Gas, Inc	04-27-89	G-S		
ST89-3224	United Gas Pipe Line Co	American Central Gas Cos., Inc	04-27-89	G-S		
ST89-3225	El Paso Natural Gas Co	Houston Pipe Line Co	04-27-89	B		
ST89-3226	Panhandle Eastern Pipe Line Co	Bowling Green Gas Co	04-27-89	G-S		
ST89-3227	Northern Natural Gas Co	BP Gas Transmission Co	04-27-89	B		
ST89-3228	Northern Natural Gas Co	Apache Corp	04-27-89	G-S		
ST89-3229	Northern Natural Gas Co	City of Ponca	04-27-89	B		
ST89-3230	Northern Natural Gas Co	Williams Gas Marketing Co	04-27-89	G-S		
ST89-3231	Northern Natural Gas Co	Amax Oil & Gas Inc	04-27-89	G-S		
ST89-3232	Northern Natural Gas Co	ARCO Natural Gas Marketing, Inc	04-27-89	G-S		
ST89-3233	United Texas Transmission Co	Florida Gas Transmission Co., et al	04-28-89	C		
ST89-3234	Sabine Pipe Line Co	BP Gas Transmission Co	04-28-89	B		
ST89-3235	Sabine Pipe Line Co	Mobil Vanderbilt-Beaumont Pipeline Co	04-28-89	B		
ST89-3236	Sabine Pipe Line Co	Mobil Vanderbilt-Beaumont Pipeline Co	04-28-89	B		
ST89-3237	Western Gas Supply Co	Cheyenne Light, Fuel & Power Co	04-28-89	C		
ST89-3238	Northwest Pipeline Corp	Suncor, Inc	04-28-89	G-S		
ST89-3239	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	04-28-89	B		
ST89-3240	Transcontinental Gas Pipe Line Corp	City of Shelby	04-28-89	B		
ST89-3241	Transcontinental Gas Pipe Line Corp	Commissioner of Public Works, Greenwood	04-28-89	B		
ST89-3242	Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	04-28-89	B		
ST89-3243	Transcontinental Gas Pipe Line Corp	City of Danville	04-28-89	B		
ST89-3244	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	04-28-89	B		
ST89-3245	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina, Inc	04-28-89	B		
ST89-3246	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	04-28-89	B		
ST89-3247	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	04-28-89	B		
ST89-3248	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	04-28-89	B		
ST89-3249	Transcontinental Gas Pipe Line Corp	City of Laurens	04-28-89	B		
ST89-3250	Transcontinental Gas Pipe Line Corp	North Carolina Gas Service Co	04-28-89	B		
ST89-3251	Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	04-28-89	B		
ST89-3252	Transcontinental Gas Pipe Line Corp	Owens-Corning Fiberglass Corp	04-28-89	B		
ST89-3253	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	04-28-89	B		
ST89-3254	Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	04-28-89	G		
ST89-3255	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	04-28-89	B		
ST89-3256	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	04-28-89	B		
ST89-3257	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	04-28-89	B		
ST89-3258	Transcontinental Gas Pipe Line Corp	City of Lexington	04-28-89	B		
ST89-3259	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	04-28-89	B		
ST89-3260	Transcontinental Gas Pipe Line Corp	Union Gas Co	04-28-89	B		
ST89-3261	Transcontinental Gas Pipe Line Corp	South Carolina Gas Pipeline Corp	04-28-89	B		
ST89-3262	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	04-28-89	B		
ST89-3263	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	04-28-89	B		
ST89-3264	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	04-28-89	B		
ST89-3265	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	04-28-89	B		
ST89-3266	Transcontinental Gas Pipe Line Corp	Clinton-Newberry Nat. Gas Authority	04-28-89	B		
ST89-3267	El Paso Natural Gas Co	Enron Gas Marketing, Inc	04-28-89	G-S		
ST89-3268	El Paso Natural Gas Co	Natural Gas Processing Co	04-28-89	G-S		
ST89-3269	El Paso Natural Gas Co	Meridan Oil Inc	04-28-89	G-S		
ST89-3270	El Paso Natural Gas Co	Trigen Resources Corp	04-28-89	G-S		
ST89-3271	El Paso Natural Gas Co	Access Energy Pipeline Corp	04-28-89	B		
ST89-3272	El Paso Natural Gas Co	Hondo Oil & Gas Co	04-28-89	G-S		
ST89-3273	El Paso Natural Gas Co	Bay State Gas Co., et al	04-28-89	B		
ST89-3274	El Paso Natural Gas Co	Independents Gas Services	04-28-89	G-S		
ST89-3275	El Paso Natural Gas Co	Southwest Gas Corp.	04-28-89	B		
ST89-3276	Western Transmission Corp	Sinclair Pipeline Co	04-28-89	B		
ST89-3277	Western Transmission Corp	Williams Gas Co	04-28-89	B		
ST89-3278	Western Transmission Corp	Vesgas Co	04-28-89	B		
ST89-3279	Western Transmission Corp	Energy Pipeline Co	04-28-89	B		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST89-3280	Transwestern Pipeline Co	Enron Gas Marketing, Inc	04-26-89	G-S		
ST89-3281	Columbia Gulf Transmission Co	Alabama-Tennessee Nat. Gas Co., et al	04-26-89	B		
ST89-3282	Valero Transmission, L.P	Tennessee Gas Pipeline Co	04-26-89	C		
ST89-3283	Williams Natural Gas Co	B & A Pipeline Co	04-26-89	B		
ST89-3284	Williams Natural Gas Co	Kansas Power and Light Co	04-26-89	B		
ST89-3285	Williams Natural Gas Co	Board of Util., Springfield	04-26-89	B		
ST89-3286	Williams Natural Gas Co	Terra Resources, Inc	04-26-89	G-S		
ST89-3287	Trunkline Gas Co	Anadarko Trading Co	04-26-89	G-S		
ST89-3288	Trunkline Gas Co	Ultramar Oil & Gas, Ltd	04-26-89	G-S		
ST89-3289	Panhandle Eastern Pipe Line Co	Seagull Marketing Services, Inc	04-26-89	G-S		
ST89-3290	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-26-89	G-S		
ST89-3291	Panhandle Eastern Pipe Line Co	E.I. Dupont de Nemours & Co	04-26-89	G-S		
ST89-3292	Panhandle Eastern Pipe Line Co	Mountain Industrial Gas Co	04-26-89	G-S		
ST89-3293	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-26-89	G-S		
ST89-3294	Panhandle Eastern Pipe Line Co	Mountain Industrial Gas Co	04-26-89	G-S		
ST89-3295	Panhandle Eastern Pipe Line Co	Mountain Industrial Gas Co	04-26-89	G-S		
ST89-3296	Panhandle Eastern Pipe Line Co	Interstate Gas Marketing	04-26-89	G-S		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (Final Rule and Notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

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[Docket No. PL89-1-000]

Interim Gas Supply Charges; and Interim Gas Inventory Charges, Proposed Policy Statement

May 30, 1989.

I. Introduction

The Federal Energy Regulatory Commission (the Commission) is proposing a policy statement for the implementation of interim gas inventory charges for pipelines while the Commission considers individual pipeline applications for permanent gas inventory charges.

II. Background

On August 7, 1987, the Commission issued Order No. 500 in which it adopted an interim rule and statement policy dealing with, among other things, the take or pay problems of the gas pipeline industry.[1] The Commission established a "one time only" mechanism of equitable sharing for the treatment of past take or pay costs, which expired March 31, 1989. In addition, Order No. 500 adopted a policy, codified in § 2.105 of the Commission's regulations, with respect to "the parameters in which a pipeline may file to recover the costs of maintaining supply for their customers."[2] As set forth in § 2.105, the gas supply or inventory charge for standing ready to supply gas must be in accordance with the following principles:

(a) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(b) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(c) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the service, and hold that price or pricing formula firm during the interval arranged in paragraph (b) of this section.

(d) By nominating a new level of service lower than its current level, a customer has consented to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.[3]

Although the Commission has issued certificates authorizing gas inventory charges (GICs), to date, no pipeline has implemented a gas inventory charge.[4] As a general matter, the Commission believes that in the current economic and regulatory environments for the natural gas industry, it is in the public interest for interstate gas pipelines to implement GIC mechanisms as soon as possible in order to prevent a reoccurence of the take or pay problems of the past. A GIC is the most effective way to accomplish this objective.

Currently pipelines cannot reflect the cost of maintaining inventories of gas supplies in their rates on a current basis. This proposed policy statement addresses that problem. The Commission believes that providing for interim implementation of the gas inventory charge mechanism will benefit both pipelines and their customers by enabling them to plan and coordinate their relationship and their relationships with others pursuant to current needs and to contract for a portfolio of gas supplies within the framework of a rational, efficient pricing structure. As the Commission stated in Order No. 500:

> The rate design is intended as a future-looking mechanism to recover the costs of contractually committing gas service that has been tailored to meet the customer's nominations whenever fewer than nominated volumes (or a reasonable percentage of nominated volumes) are taken by a customer, who is fully aware that such charges would be *currently* assessed on a monthly basis, based on its own service nomination. In brief, the Commission is seeking to establish a rational, efficient pricing structure for the pipeline merchant function with emphasis on reciprocity and consideration of service obligations under the increased options available to a pipeline's sales customers.[5]

The Commission's experience to date has been that the establishment of a permanent gas inventory charge that relies on the market to establish the prices to be charged involves an inquiry that can be quite time consuming. The Commission is attempting currently to deal with this dilemma.[6]

[1] FERC Stats. & Regs. ¶ 30,761.

[2] *Id.* at 30,792.

[3] 18 CFR 2.105 (1988).

[4] To date, three vastly different gas inventory charge proposals have been approved by the Commission. Transwestern Gas Pipeline Co., 43 FERC ¶ 61,240 (1988), certificate pending acceptance; Natural Gas Pipeline Company of America, 44 FERC ¶ 61,163 (1988), certificate rejected; and Texas Eastern Transmission Corp., 44 FERC ¶ 61,413 (1988, *reh'g denied*, 47 FERC ¶ 61,100 (1989), certificate accepted.

[5] *Id.* at 30,794.

[6] *See* El Paso Natural Gas Company, 47 FERC ¶ 61,108 (1989).

The purpose of this proposed policy statement is to propose methods for developing a limited term gas inventory charge, and to set forth related terms and conditions of service, for use on an interim basis until individual pipelines implement permanent gas inventory charges. The Commission has been concerned for some time about take or pay obligations in the natural gas industry. That is why the Commission issued Order No. 500. The Commission sees an interim GIC as a bridge between the expiration of one phase of addressing the take or pay problem—the equitable sharing direct billing mechanism—and the beginning of the next phase of dealing with future accumulations of take or pay—the implementation of gas inventory charges—throughout the gas pipeline industry.

The Commission's intent is to avoid the reoccurence of significant amounts of unfunded pipeline take or pay costs. A pipeline must maintain adequate gas supplies to meet its entire service obligation. The Commission recognizes that if a mechanism does not exist to compensate a pipeline for maintaining these gas supplies, it will have a negative impact on the ability of the pipeline to serve as a merchant. For this reason, the Commission recognizes that action is needed in the near term to allow pipelines to put in place an interim GIC.

The proposed policy statement details several possible methods for developing an interim gas supply charge and a limited term gas inventory charge. There may be other equally appropriate methods that could be used. The Commission is interested in receiving comments on the methods outlined herein, as well as on any other method the commenters may wish the Commission to consider.

The Commission understands that factual circumstances vary from pipeline to pipeline that may require different GICs to be implemented. For example, pipeline will have different sales and transportation markets, customer demand profiles and gas supply contracts with varying terms and conditions, which need to be considered. Furthermore, the Commission continues to support strongly the use of settlement procedures, where appropriate, to fashion permanent GICs on a case by case basis.

III. The Proposals in a Nutshell

The Commission is seeking comments on several methods for a pipeline to use in establishing the two components of the interim gas supply charge. The first method would replace the current pipeline purchased gas adjustment (PGA) mechanism by substituting an interim gas supply charge. The charge would be a two part charge. One part would be the interim gas inventory charge. The other part would be the gas commodity charge. The pipeline would base its interim gas commodity charge for sales service on a competitive market price composite (as illustrated in the appendix to this notice) and its gas inventory charge on that composite multiplied by a percentage factor as derived below. The gas inventory charge is thus a premium, where appropriate, over the gas commodity charge to compensate the pipeline for costs related to the merchant function not covered by the gas commodity charge.

Under the second method, the pipeline would continue to use the PGA mechanism as the basis for the interim gas commodity charge for sales service. The pipeline would be allowed to impose a charge equal to a percentage of its current weighted average cost of gas (WACOG) as its gas inventory charge. The gas inventory charge portion of the interim gas supply charge mechanism would be applicable only if a firm sales customer's actual purchases fall below a percentage of either its monthly or annual nominated purchase amounts as described below. A variant of this method would permit the pipeline to impose a charge in cents per MMBTu (rather than a charge based on a percentage of its WACOG) as its gas inventory charge. As with the first method, the gas inventory charge is a premium over the gas commodity charge to cover costs associated with the merchant function not covered by the gas commodity charge.

The instant gas inventory charge proposals are in no way intended to affect contractual rights and responsibilities arising under any pipeline's gas purchase contracts.

The Commission believes that the combination of the use of the interim gas supply charge and the reconciliation mechanism fulfills the intent of the Natural Gas Policy Act of 1978 that market forces play a "more significant role in determining the supply, the demand, and the price of natural gas," [7] and the mandate of the Natural Gas Act that a pipeline's rates must be just and reasonable.

For pipelines using the competitive price method, the Commission's proposed competitive price composite, as demonstrated by the appendix,[7a] represents a true and not a presumed market price. The deficiency charge method uses both the PGA mechanism and a WACOG measurement for the cost of gas. It is a cost based method. In addition, the Commission has coupled both pricing mechanisms with the reconciliation mechanism which forms a cost based price cap on the pipeline's rates. Hence, as an end result, it can be argued that the pipeline's customers will be ensured just and reasonable rates.[8]

IV. The First Method: The Competitive Price Concept

A. Introduction

As an interim measure, the Commission is considering, and seeking comments on, use of a composite price of competitive market prices as an appropriate basis for sales service (the gas commodity charge) and for the interim gas inventory charge if the following four conditions are satisfied: (1) That the competitive market functions properly, in the sense that price responds to changes in the demand and supply of gas, (2) that the competitive price average used by the pipeline is representative of actual competitive prices in supply areas from which the pipeline receives its gas, (3) that such competitive price reports are readily available (by subscription or otherwise) to the pipeline, its customers and to the Commission, and (4) that such reports should be published on a regular interval by an entity not engaged in the business of buying, selling, transporting or brokering natural gas. Any source that meets these conditions can be used. The appendix to this notice sets out an illustrative calculation.

Such available data on the competitive market may demonstrate that the competitive market is currently a well functioning market in the sense that it is broad (competitive sales, under varying terms and conditions, as a percent of total throughout are variously estimated at between 35 and 70 percent), and that it responds to forces of supply and demand (*i.e.*, there is a pronounced seasonal effect on competitive prices). The appendix to this notice is the staff's report which discusses the use of competitive market prices as a basis for gas sales service and an interim gas inventory charge.

The staff has also examined the behavior of competitive price series published in four different trade periodicals and concludes that the series are in general agreement with one

[7] Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Miss., 474 U.S. 409, 422 (1986).

[7a] This appendix is available from the Commission's Public Reference Room.

[8] FPC v. Texaco, 417 U.S. 380, 397–399 (1974); *Cf.* Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1501–1503, 1509–1510, (DC Cir. 1984).

another, and that the competitive prices respond to the forces of supply and demand. Thus, competitive prices may serve as an appropriate basis for the gas commodity charge and the gas inventory charge where the competitive prices exmained are representative of competitive prices in the supply areas to which they refer.

The gas inventory charge permits the pipeline to pay a premium, where appropriate, in the form of a fixed charge or a higher commodity price for long term supplies. Indeed, as discussed below, the gas inventory charge is intended to covere gas supply costs and not to provide additional profit for the pipeline.

B. Theory

An interim gas inventory charge may be developed from the perspective of the value of gas supply contracts to the pipeline and its customers. The focus is on the aggregated value of the pipeline's inventory of contracts.

From the pipeline's perspective, entering into gas supply contracts with producers is a necessary step in the process of offering firm merchant sales service to its customers. Without those contracts the pipeline could not provide reliable firm sales service. The benefits associated with those contracts are not relized, however, without some obligations and financial risk to the pipeline. For example, gas supply contracts can be viewed (at least in an operational sense) as providing something of value to the pipeline and customers demanding merchant service by the pipeline. But the pipeline may, nonetheless, be exposed to financial risks contained in the contracts. If the pipeline does not perform in accordance with the contracts, the pipeline may be exposed to the incurrence of added costs (*e.g.*, take or pay liability claims, contract reformation costs, *etc.*).

For the purposes of quantifying an interim gas inventory charge, an analogy can be drawn before compensation for the "exposed value" of net depreciated fixed assets and compensation for the pipeline's exposure under its inventory of gas supply contracts. This approach derives the gas inventory charge based on the value of the pipeline holding an inventory to gas supply contracts for the benefits of its customers, not on the pipeline customer's "deficiency quantities." In other words, this approach derives the gas inventory charge by considering the gas supply insurance for the pipeline's customers due to the pipeline's inventory of gas supply contracts and the costs to the pipeline of holding and managing that inventory of contracts.

The approximate value of an inventory of gas supply contracts can be established for these purposes based on the expected value for which the pipeline could sell the gas in the competitive market. Although that price would be expected to vary over time, depending on competitive conditions, the adoption of the competitive price approach in the pipeline's major gas supply areas is reasonable. (See the appendix.)

Periodic changes in the competitive price index reflect market changes in natural gas supply and demand and incorporate the effects of inflation. This approach establishes the gas inventory charge based on an "instantaneous charge." By using a "variable" price index there is no need for any discounting (in a "present value" context) or for factoring in inflation of future expected prices.

Also, the instantaneous charge does not require any discounting (in a "present value" context) of the quantity of gas to be produced at future dates under individual or aggregated contracts. Rather, this approach assumes that the pipeline will maintain an inventory of gas supply contracts consistent with the service demands of, and under the terms and conditions, demanded by its customers. That is, the pipeline would be expected to add new contracts under varying terms and conditions when and where they are needed and shed other contracts when appropriate.

The net effect is that the pipeline would be expected to maintain an inventory or portfolio of contracts, providing the aggregate instantaneous deliverability, long-term reserves, if required, with contract provisions consistent with the merchant service demands of its customers. The mix of physical features (*e.g.*, deliverability, rate of production decline, expected depletion period, *etc.*) related to the gas supply supporting individual contracts, and the contract parameters (*e.g.*, term, price, take requirement, make-up provision, *etc.*) would be expected to satisfy these requirements. Thus, there is no need to examine the operation of individual contracts.

C. Quantification

The essential question is how to best recognize through the pipeline's current rates the value to the pipeline's customers for risks undertaken by the pipeline in assemblying and maintaining an inventory of gas supply contracts, whether short or long-term, needed to fulfill its merchant function.

In the past, the pipeline has been compensated for its take or pay costs by including gas prepayments in the pipeline's rate base and imputing the pipeline's overall pre-tax rate of return allowance to such costs. However, the pipeline foregoes this rate treatment (and any other means of collecting take or pay costs) when it elects the interim gas supply charge mechanism, which includes the gas inventory charge. Thus the risks attending the inventory of contracts held by the pipeline are shifted entirely to the pieline.

The Commission is considering compensating the pipeline for costs reasonably associated with the risk of holding gas supply contracts at the same level that the Commission compensates the pipeline for holding its physical assets. That is, assuming the pipeline's approved pre-tax return utilizes the current 34 percent Federal tax rate, the proposal would not adjust the pipeline's approved pre-tax rate of return for use in developing the interim gas inventory charge.

The next step in quantifying the interim gas inventory charge developed here would require an estimation of a reasonable overall take or pay level to assign to the pipeline's inventory of contracts. On December 16, 1982, the Commission adopted § 2.103 of the Commission's regulations which established 75 percent of deliverability as the take level above which no presumption of prudence would attend for *new* contracts.[9] Prior to this time, new gas supply contracts typically incorporated considerably higher take levels (*e.g.*, 90 percent was not uncommon). In prescribing the 75 percent take or pay factor, however, the Commission made clear that 75 percent was the upper limit, and that it was not intended to be a floor. Nothing stated here should in any way be construed as suggesting that the 75 percent factor is anything other than an upper limit for use in the gas inventory charge formula described here.

It would not be appropriate to develop the interim gas inventory charge simply by multiplying the pipeline's pre-tax rate of return by the price of the gas. That is because the pipeline is not at risk for the full quantity of gas available under its inventory of gas supply contracts. It is only at risk for the quantity of gas subject to the take or pay requirement. And, as explained above, there is a

[9] The Commission has referred to this policy in addressing take or pay issues in its orders. *See, eg.*, State of Michigan and Michigan Public Service Commission v. Trunkline Gas Co., 24 FERC ¶ 61,013, at 61,060 (1983) and Tennessee Gas Pipeline Co., 26 FERC ¶ 61,102 at 61,247–48, n. 13 (1984). The Commission does not intend to expand in any way the scope of "new" contracts covered by § 2.103.

ready reference point that recognizes that the pipeline is not at risk (or certainly it should not be) for the full quantity of gas supporting the contracts. That factor is the 75 percent deliverability factor that appears at § 2.103 of the Commission's regulations.

The Commission therefore is considering and is seeking comments on adopting the 75 percent factor as a reasonable generic approximation to compensate for the exposure that the pipeline would have under the operation of take or pay provisions in its contracts. This level of inferred take requirement should result in adequate compensation for the risks of exposure to take or pay and contract reformation costs undertaken by the pipeline or the risk of maintaining long-term supplies in a competitive market. At the same time, the "reconciliation mechanism"—which is described below—will provide adequate protection to the pipeline's customers.

In summary, the approach developed here would recognize and account for several features. First, it would recognize that the gas supply available to the pipeline and its customers through the pipeline's inventory of gas supply contracts provides something of value to the pipeline and its customers, *i.e.*, gas supply insurance. This inventory of contracts takes on similarities to and provides the equivalent operational functions (in an operating sense, but not in a financial accounting sense) as though the pipeline itself owned the gas supply supporting the contracts. This feature would be recognized for ratemaking purposes by imputing an economic value based upon the pipeline's overall pretax rate of return and the price at which the gas would be available from time to time to the pipeline's customers.

Second, the approach recognizes that the pipeline is not at risk for all of the gas supply supporting the inventory of contracts held by the pipeline, but only to the extent of its take or pay and other contract requirements. This feature would be recognized for ratemaking purposes by, effectively, viewing the pipeline's inventory of contracts as one "umbrella contract" and imputing the generic 75 percent take factor discussed above. The use of this factor would also served as an acknowledgment of the Commission's general policy against take obligations above the 75 percent threshold, thereby encouraging continued renegotiations of contracts that have not yet been reformed to reflect the realities of the natural gas market.

Under the approach outlined here, the overall level of a hypothetical pipeline's gas inventory charge would be established by the product of the following three factors:

(1) The monthly average price of competitive purchases, estimated for illustrative proposes here to be $2.00/MMBtu;

(2) An assumed overall pre-tax rate of return of 15 percent for illustrative purposes; and

(3) An inferred overall take requirement of 75 percent under the inventory of gas supply contracts.

Those factors in this illustrative computation would support an interim gas inventory charge level of: $2.00/MMBtux11.25%=22½¢/MMBtu. A customer's monthly entitlement times 22½¢ would equal its total monthly gas inventory charge obligation.

The interim gas supply charge would thus consist of the gas inventory charge and the gas commodity charge. Taken together, the charges are intended to cover the pipeline's total payments to producers such as the cost of gas it purchases (including any premium paid for long-term contracts in the form of higher prices), gas inventory charges paid to producers, carrying charges on prepayments, settlement payments, and contract reformation costs.

V. The Second Method: The Deficiency Charge Method

A. Introduction

Also as an interim measure, the Commission is considering, and seeking comments on, an interim gas supply charge composed of a pipeline's gas commodity charge based on the current PGA mechanism subject to a cap, plus an interim gas inventory charge (set at, for example, 20% of a pipeline's WACOG) that would be charged if a firm sales customers actual purchases fall below, for example, 60% of either its monthly or annual nominated purchase amounts. The percentages posed here are illustrative; they were included in a gas inventory charge proposal previously approved by the Commission (Texas Eastern Transmission Corp., 44 FERC ¶ 61,413 (1988), *reh'g denied*, 47 FERC ¶ 61,100 (1989)).

B. Theory

The Commission recognizes that if its customers desire it to remain as a merchant, the pipeline is obligated to enter into natural gas purchase contracts in order to secure sufficient supplies to meet the demands of its firm sales customers. Here the Commission continues to recognize the use of the PGA mechanism to establish the gas commodity charge component of the interim gas supply mechanism.

The gas inventory charge component of the mechanism is designed to compensate the pipeline for the cost of maintaining a ready supply of gas in those instances in which a customer's actual purchases fall significantly below its nominated purchase amounts.

Two aspects of the requirements imposed on a pipeline that wishes to use the interim gas supply mechanism are essential prerequisites to the Commission's view that this proposal is in the public interest.

First, a pipeline wishing to implement an interim gas inventory charge will be required to allow its customers to meaningfully nominate new purchase amounts within their firm service entitlements. Second, in cases when the nomination is less than a customer's firm service entitlement, the pipeline will be obligated to provide firm transportation at a rate comparable to the transportation component of the rate charged to its firm sales customers, if the customer desires. Thus, the Commission believes these customers should not be considered to be totally captive sales customers. This should encourage the supplying pipeline to exercise considerable discipline with respect to its purchasing practices during the pendency of the interim gas supply charge. In any event, it is appropriate for customers to pay the interim gas inventory charge to compensate the pipeline for costs incurred as a result of customers purchasing volumes below their nominated levels.

The interim gas inventory charge proposed here (as is the competitive price charge) is based upon various proposals made by various pipelines to date for permanent gas inventory charges. The interim gas inventory charge would go into effect if a firm sales customer's actual purchases fall below a percentage of either its monthly or annual nominated purchase amounts. The proposal is outlined in detail below.

C. Quantification

The Commission proposes to allow the pipeline to use the current PGA mechanism as the basis for the gas commodity charge. The Commission proposes further to allow the pipeline to charge 20% of its currently effective WACOG as the interim gas inventory charge that will be in effect whenever a customer's actual purchases fall below 60% of either its monthly or annual nominated purchase amounts.[10] The

[10] As in *Texas Eastern*, the charge would be billed on a monthly basis to each customer

Continued

Commission requests comments on both the percentages proposed here.

D. Ceiling On Gas Cost Component

Prior to the nomination period for the gas inventory charge, the pipeline will also be required to post a ceiling price or prices for the gas cost component of the commodity charge, *i.e.*, current cost of gas plus surcharge adjustment for the period the gas inventory charge nominations are in effect. The ceiling prices should be based on the pipeline's current PGA rates as adjusted for known and measurable changes that will occur during the period the gas inventory charge is in effect. Alternatively, the ceiling could also be revised to reflect changes in the average wellhead cost of gas as measured by reference to sources outside the control of the pipeline. For example, if the average wellhead price of gas increased by 10%, the ceiling could be increased by 10%.

The pipeline would not be precluded from filing to increase its price above the stated ceiling price. However, if it does so, the pipeline must offer its customers another opportunity to revise their sales nominations.

VI. Reconciliation Mechanism

As noted above, the interim gas supply charge mechanism, consisting of a two part rate including the gas commodity cost, plus the interim gas inventory charge, has been based on factors that are known at the time of its authorization (*e.g.*, pre-tax rate of return, imputed take requirement) and various gas price mechanisms—which, although not known now, will be based on future events (*i.e.*, changes in competitive prices, or WACOG, or PGAs) and will be known as those future events occur. What the Commission does not know, and is unable to project at this time, is the pipeline's actual level of gas commodity payments, take or pay payments, contract reformation costs, and other costs related to its merchant function. That is, because we are dealing with a new service, there are no "base period" data upon which projections of these future merchant-function costs could be made. To address this concern and to guard against excessive charges to the pipeline's customers, a "reconciliation mechanism" would be adopted.

The reconciliation mechanism is straight forward. It would compare the sum totals of actual revenues and actual expenses for the following:

(1) The pipeline's revenue collection through (a) its charges for the gas actually sold by it as a merchant under either method and (b) its gas inventory charge under either method; and

(2) The pipeline's actual payments for (a) the gas it purchased and resold as a merchant, and (b) payments made to suppliers and sought to be recovered through gas inventory charges, including premiums paid to producers, take or pay buy-out/buy-down settlement payments, contract reformation costs (less any amounts recovered under the litigation exception of its Order No. 500 passthrough mechanism), and carrying charges on gas prepayments.

Within 90 days following the end of the limited term certificate authorizing the interim gas supply charge, including the gas inventory charge, the pipeline would file a reconciliation report with the Commission. To the extent that the report includes material that the pipeline believes is confidential and proprietary (*e.g.* take or pay settlement payments, *etc.*), the pipeline can seek confidential treatment of any such material consistent with the Commission's regulations. Customers and other affected parties will be entitled to comment on the pipeline's report, and any questions concerning the pipeline's purchasing practices could be explored at that time.

If the pipeline has qualified for a litigation exception to the Order No. 500 equitable sharing passthrough mechanism as established in Order No. 500–F,[11] it would have to exclude any costs covered by the litigation exception from the costs to be reflected under the gas inventory charge reconciliation mechanism. Additionally, if the pipeline makes nonjurisdictional sales or sales under a blanket interruptible sales certificate, it would have to exclude the associated costs and revenues from the gas inventory charge reconciliation. The pipeline would need to file provisions to reflect the gas inventory charge reconciliation mechanism in its tariff.

To conclude, the "reconciliation mechanism" for the interim gas supply charge would compare the pipeline's actual gas supply costs for sales service with the actual revenues received for the service during the period that the interim charge was in effect. Any excess revenues would be returned to the pipeline's customers in proportion to their nominations or their deficiencies (depending on the method used) during the period that the particular interim gas supply charge was in effect. Interest on any over collections would be imputed from the end of the period that the interim gas supply charge is in effect at the rate of interest for refunds specified in the Commission's regulations. The pipeline would be at risk for any under collections of revenue, and the pipeline would not be permitted to file to recover the costs of any under collections. The Commission believes these proposed procedures strike an appropriate balance between the needs of the pipeline for funding its merchant function and protection against any excessive charges to the pipeline's customers during the period that the interim gas supply charge would be in effect.

VII. Other Generally Applicable Related Requirements

The Commission believes it would be in the public interest to condition the certificates to ensure, among other things, that any interim gas supply mechanism would not be anticompetitive or unduly discriminatory. The necessary conditions would be as follows:

A. Term and Applicability

The certificate would be for a period of two years from the date of a pipeline's acceptance of a certificate. This would provide adequate time for hearing and decision on and implementation of a permanent gas inventory charge proposal. In addition, this would provide sufficient time for pipelines to implement the interim gas supply charge mechanism and would provide maximum certainty to the pipeline and its customers. A pipeline must also have an application for a permanent gas inventory charge pending before the Commission.

B. Sales Schedules To Use

The pipeline would use its existing firm sales rate schedules for implementation of the interim gas supply mechanism,[12] and would use the interim gas supply mechanism for service under all its firm sales rate schedules.[13] This would enable the

purchasing less than its monthly inventory determinant. The sum of a customer's twelve monthly inventory determinant nominations must equal at least 60% of the customer's annual contract demand. However, monthly charges could be offset by purchases above monthly inventory determinants in other months. Thus, if a customer met the 60% level on an annual basis, the pipeline would refund the amounts previously collected from the customer.

[11] FERC Stats. & Regs. ¶ 30,841.

[12] The pipeline would need to modify its existing rate schedules to reflect the option service and gas commodity charges. The pipeline also would revise its tariff to include the methodology for calculating the option service and gas commodity charges.

[13] Rate schedules which have a one-part rate would also be subject to the gas inventory charge.

Continued

pipeline's customers to continue service under existing rate schedules during the period of the interim mechanism and avoid disruption in service at the conclusion of the two-year period if the pipeline's permanent gas inventory charge has not gone into effect.

C. Standby Service

The pipeline would implement a 100 percent standby service under all its firm sales rate schedules whereby its firm sales customers may take their full daily entitlements as either sales, transportation, or any combination of sales and transportation. The pipeline's standby charge would be separately stated in each firm sales rate schedule and would be designed in accordance with Commission precedent.[14] The pipeline's transportation under standby service would be performed under its firm transportation rate schedule. This condition would ensure that customers could make their gas purchase decisions based solely on the price of gas.

D. Nominations

The pipeline would permit its firm sales customers to freely nominate both monthly and annual requirements, provided that a customer's total of monthly entitlements cannot exceed its nominated annual entitlement. Any customer which nominates monthly and annual entitlements below its full current contract demand level during the period of this gas inventory charge would be considered to have consented to abandonment of the amount not nominated (subject to revival if the pipeline does not have a permanent gas inventory charge in place upon termination of its limited gas inventory charge).[15]

E. Conversions

The pipeline would permit its firm sales customers to convert up to 100 percent of firm entitlements to firm transportation service. This provision and the one above concerning nominations would enable the pipeline to tailor its gas supply to meet customer nominations without guessing what supply may be needed or shed in the future.

F. Purchased Gas Adjustment Clause

The pipeline using method one, the competitive price method, would terminate the operation of its PGA clause for the period of its limited term certificate and would be entitled to direct bill its Account No. 191 balance. This will more closely match cost responsibility with cost incurrence and remove future uncertainty for pipelines and their customers as to the disposition of the monies in that account. The pipeline could only reinstate its PGA by complying with § 154.303(b) of the regulations or by establishing its right to a waiver therefrom. The Commission at the end of the limited term certificate will waive the three year rule to permit the pipeline to reinstate its PGA.

The pipeline would propose a plan for direct billing which would permit its customers to pay the direct bill either in installments or in a lump sum. Customers would be allowed to challenge the prudence of the direct billing amounts. In addition, the pipeline would make any applicable refunds to its customers.

As with the PGA process, the parties will have the opportunity to challenge the pipeline's expenditures and purchasing practices on grounds of prudence, fraud and abuse, and the affiliated entities test on a general and individual contract basis.

The interim gas supply charges and the interim gas inventory charges proposed here are primarily designed for pipelines that purchase exclusively or almost exclusively from producers.[16] The Commission anticipates that those pipelines that purchase primarily from other pipelines will continue to maintain their PGA mechanisms and flow through the gas inventory charges in their rates on an as-billed basis.

The Commission recognizes that there are some pipelines that do not fall into either category, *i.e.*, the pipeline purchases significant supplies from both other pipelines and producers. These pipelines should propose a method for handling these two types of purchases in their certificate applications.

G. Open Access

The pipeline must remain an open access transporter under Part 284, Subpart G of the Commission's regulations for the term of the interim certificate.

H. Storage

The pipeline would be required to remove any restrictions on its customer's ability to inject gas purchased from others into contract storage.

I. Receipt Points

The pipeline would be required to permit flexible receipt points in its firm transportation contracts.

J. Take or Pay Costs

The pipeline would not recover future take or pay or similar charges from customers by any means other than the gas inventory charge except those costs which it is allowed to recover under the litigation exception. The pipeline would be required to demonstrate that it would not recover the same take or pay costs under which its gas inventory charge and its Order No. 500 charges. The pipeline would be required to delete tariff references to take or pay crediting and would not be entitled to require information with respect to take or pay crediting in customer requests for transportation or in contracts.

K. Judicial Review

In addition, a pipeline's acceptance of a limited term certificate would constitute a waiver of its right to seek judicial review of each and every aspect of the order issuing the certificate. The Commission believes that this is appropriate because the pipeline's acceptance of a certificate would be voluntary. It may reject the certificate and retain its current sales service pricing procedures and pursue its own gas inventory charge proposal. It would be inappropriate if the pipeline could accept the limited term certificate, which is a package, and litigate its individual components.

L. Future Rate Filing

The Commission would also require the pipeline to make a full Section 4 rate filing under § 154.63 of the Commission's regulations within 90 days of its acceptance of the certificate if it does not have a current rate case pending or rates which were established based on a base period ending within 12 months

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If, however, the charge is based on monthly entitlements, an imputed charge would not be needed.

[14] *E.g.*, Tennessee Gas Pipeline Co., 42 FERC ¶ 61,175 at 61,633. In short, the standby charge must "recover only those costs which [it] incurs to stand ready to resume sales service should the firm sales customer elect to purchase gas from [the pipeline rather than use its transportation service]." *Id.* In addition, the pipeline may recover gathering costs only once from shippers under its standby service. Thus, if a shipper pays for gathering as part of the cost of the pipeline standing ready to sell gas, the shipper should not also pay for gathering as part of its transportation charges.

In designing such charges, the pipeline's calculations must distinguish between sales rate schedules that contain one part rates and those which contain two-part rates. Additionally, the pipeline must agree to waive the firm transportation reservation charge when customers use the standby service to transport gas, in order to prevent a double collection of costs. For a further detailed discussion *see* El Paso Natural Gas Company, 35 FERC ¶ 61,440 at 62,070 (1985).

[15] *See* 18 CFR 2.105 (1988).

[16] Those pipelines that purchase a small percentage of their supply from other pipelines may need to make minor modifications to the proposals to reflect the demand charges or GICs of their suppliers.

from the date a certificate would go into effect. This is necessary because such items as the pipeline's rate of return may be out of date and its allocation of costs and levels of service may not be synchronized.[17]

M. Competitive Price Filings

The pipeline using method one, the competitive price method, would be required to file with the Commission, on a quarterly basis, tariff sheets reflecting the competitive price utilized for purposes of computing the commodity sales rates and the interim gas inventory charge.

VIII. Additional Questions on Which Comments Are Sought

The Commission is particularly interested in receiving comments on the following issues:

(1) The proposed policy statement details two possible methods for developing an interim gas supply charge and an interim limited term gas inventory charge. The Commission is interested in receiving comments on the two proposals outlined herein, as well as on any other proposal for implementation on an interim basis.

(2) The purpose of providing a mechanism for an interim gas supply charge, and an interim gas inventory charge, is to provide a means to compensate pipelines for securing long-term natural gas supplies for firm sales customers and, in particular, to prevent a reoccurrence of the take or pay problems of the past. Would implementation of either of the methods proposed herein, if coupled with implementation of a permanent gas supply charge and a permanent gas inventory charge, accomplish those objectives?

(3) What effect would implementation of either method have on a pipeline's ability to market gas and on the purchasing practices of LDCs?

(4) The competitive pricing method for the interim gas supply charge uses 75 percent as an estimation of a reasonable overall take or pay level to assign to the pipeline's inventory of contracts. The rationale for doing so is outlined herein. Parties should address whether that level is appropriate. Commenters suggesting another level should specify their reasons for doing so.

(5) The competitive pricing method for the interim gas supply charge ties both the gas commodity price and the gas inventory charge to competitive prices. Would doing so have a positive or negative effect on long-term gas prices from both a producer's and a consumer's point of view? Further, would doing so have a positive or negative effect on long-term gas supplies?

(6) Would implementation of an interim gas inventory charge based on either a competitive price concept or a deficiency charge method affect the rights and responsibilities of parties under existing gas purchase contracts, if so, how?

(7) The deficiency charge method for the interim gas inventory charge has been illustrated with a chrage equal to 20 percent of the pipeline's WACOG applicable only if a firm sales customer's actual purchases fall below 60 percent of its nominated purchase amounts. The illustration percentages are based on a gas inventory charge proposal approved by the Commission.[18] Parties should address whether the 20 percent and 60 percent levels are appropriate. Commenters suggesting other levels should specify their reasons for doing so.

(8) As proposed, the deficiency charge would be based on a flat percentage of a pipeline's current WACOG. Does this type of charge provide a disincentive for pipelines to keep their costs of purchased gas down? Does the deficiency charge method need to have a cap on the WACOG and, if so, how should the cap be determined? Finally, should the WACOG used in developing a deficiency charge be calculated on a weighted average basis for all interstate pipelines?

(9) Does the proposed reconciliation method adequately protect a pipeline's customers from excessive charges as a result of the interim gas supply charge and interim gas inventory charge? Does it provide an adequate incentive to pipelines to hold down costs, enter into long-term contracts if appropriate, or otherwise file for an interim gas inventory charge?

(10) Do the proposed conditions regarding nominations and conversions provide sufficient flexibility for existing firm sales customers to make a realistic assessment of their current needs in light of current market circumstances?

(11) Should the Commission consider additional voluntary rights for customers, including conversions of service obligations to interruptible transportation, abandonment or scheduled abandonment of service obligations, or combinations of the foregoing to meet the new market environment?

(12) What is the likely competitive effect of the two interim gas inventory charges discussed above on segments of the industry which would not be directly subject to the charge, such as marketers and industrial users?

(13) What is the likely competitive effect of the demand based and deficiency based gas inventory charges on the competitive nature of gas markets?

(14) Will either proposed gas inventory charge give any particular segment of the industry a competitive advantage or disadvantage?

(15) Should the Commission limit or prohibit extensions of an interim gas inventory charge in order to provide incentives for pipelines and their customers to put permanent gas inventory charges into place by the end of the two-year period?

(16) On alternative to the two methods proposed in this Notice would be to allow any pipeline to file tariffs immediately, pursuant to section 4 of the Natural Gas Act, to implement an interim GIC of 35 cents per MMBtu, for deficiencies below 80 percent of the volumes nominated, subject to refund. The amounts paid would be added to the PGA. The case would go to hearing on an expedited basis to determine the just and reasonable rate for a permanent GIC. Would this method work? Would it be preferable to the other two methods? Would consumers be protected under this proposal?

IX. Public Comment Procedures

This statement articulates the Commission's proposed policy. It does not have the force or effect of law. Though not required by section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b) (1982)), the Commission has determined that public notice and comment procedures should be adopted so that all interested person may have the opportunity to inform the Commission of their views. The Commission will consider all comments filed.

All comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before the thirtieth day from the date of issuance of this notice and should refer to Docket No. PL89-1-000. Reply comments should be submitted on or before the forty-fifth days from the issuance of this notice and should also refer to Docket No. PL89-1-000. An original and fourteen copies should be filed. Written submissions will be placed in the public file established in this docket and will

[17] The pipeline will be at risk for any undercollections of non-gas costs during the period between the effectiveness of its revised sales rates and the effective date of the new sales rates.

[18] Texas Eastern Transmission Corp., 44 FERC ¶ 61,413 (1988), *reh'g denied*, 47 FERC ¶ 61,100 (1989).

be available for public inspection during regular business hours in the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

By Direction of the Commission. Commissioner Stalon concurred with a separate statement to be issued later. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13472 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9221-002; Colorado]

Great Western Power and Light, Inc.; Surrender of Preliminary Permit

June 1, 1989

Take notice that Great Western Power and Light, Inc. Permittee for the Dallas Associates Project No. 9221, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9221 was issued August 31, 1988, and would have expired July 31, 1991. The project would have been located on the Uncompahgre River in Ouray County, Colorado.

The Permittee filed the request on March 29, 1989, and the preliminary permit for Project No. 9221 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3482 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1497-000]

Canyon Creek Compression Co.; Application

May 31, 1989.

Take notice that on May 23, 1989, Canyon Creek Compression Company (Canyon Creek), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1497-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing firm and interruptible transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Canyon Creek states that in the settlement of its general rate case in Docket No. RP88-95-000, it has agreed to become an open-access transporter, and that the settlement was approved by Commission order issued March 24, 1989, 46 FERC ¶ 61,348 (1989). It is further stated that Canyon Creek has filed along with this application *pro forma* tariff sheets identified as Volume No. 1A. These *pro forma* tariff sheets are intended to establish the rates, general terms and conditions under which Canyon Creek would perform firm and interruptible open-access transporation under Part 284 of the Commission's Regulations. Canyon Creek states that the rates for open-access transportation contained in the *pro forma* sheets are those agreed upon and approved by the Commission in the settlement and comply with the Commission's order at 43 FERC ¶ 61,191 (1988) which required Canyon Creek to develop rates for self-implementing services based on projected units of service.

Canyon Creek also states that pursuant to § 284.221(b)(1)(ii) of the Commission's Regulations, it will comply with the conditions in paragraph (c) of § 284.221.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 21, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Canyon Creek to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13481 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1121-000]

Mississippi River Transmission Corp.; Informal Technical Conference

May 31, 1989.

Take notice that on June 16, 1989, at 10:00 a.m., the Commission Staff will convene an informal technical conference in the above captioned proceeding to discuss issues and matters of general concern. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Commission Staff are invited to attend. Attendance at the conference will not confer party status.

For further information, contact William L. Zoller, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8203.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13432 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68, et al.]

Transcontinental Gas Pipe Line Corp.; Filing of Settlement

June 2, 1989.

In the matter of RP87-7-012, RP87-7-000, RP89-122-000, RP89-123-000, TA88-1-29, TA88-4-29, TQ88-1-29, TA88-5-29, TQ89-1-29, TQ89-2-29, and TQ89-4-29.

Take notice that on April 3, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in the captioned dockets a proposed Stipulation and Agreement (S&A) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 CFR 385.602). Transco's proposed S&A, if approved by the Commission, would resolve the captioned dockets before the Commission. A copy of Transco's S&A

is on file with the Commission and open to public inspection.

The S&A contains three major components; Article I addresses Transco's Order No. 500 proceeding and the resolution of take-or-pay issues, contained in Docket Nos. RP88-68-000 and RP87-7-012, a consolidated proceeding before an administrative law judge.

Article II proposes an interim two-year program whereby Transco's jurisdictional merchant (sales) function would be transferred to TEMCO, a non-jurisdictional affiliate of Transco.

Article III addresses the throughput mix and fuel retention issues currently pending for hearing in Docket No. RP87-7-000 after remand of Transco's June 24, 1988 Reserved Issue Settlement proposal.

Approval of Transco's S&A would ratify and implement, for an interim period, fundamental changes in the certificated sales and service relationship between Transco and its sales customers. During this interim period, Transco has stated that it intends to complete negotiations with its sales customers on the long term restructuring of Transco's merchant services.

Any person, who is not already a party to one of the captioned proceedings, desiring to be heard or to make any protest with reference to said S&A should on or before June 9, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). Parties to the captioned proceedings have already been given opportunity to express their views pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 CFR 385.602) and do not need to refile.

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulation Commission by sections 4, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing may be held without further notice before the Commission on this S&A.

If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that an additional formal hearing is required, further notice of such hearing will be duly given.

Lois Cashell,

Secretary.

[FR Doc. 89-13565 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of March 6 Through March 10, 1989

During the week of March 6 through March 10, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Joseph William Parmelee, 3/6/89, KFA-0263

Joseph William Parmelee (Parmelee) filed an Appeal from a determination issued by the Chief of Freedom of Information and Privacy Acts, Office of Administration Services of the Department of Energy (DOE). This determination denied a Request for Information which Parmelee had submitted under the Freedom of Information Act on the ground that no responsive documents existed. In considering the Appeal, the DOE found that an adequate search had been conducted in response to Parmelee's request for all information in the DOE's records concerning himself. Accordingly, the Appeal was denied.

Remedial Order

J.D. Streett & Company, Inc., 3/8/89, HRO-0064

J.D. Streett & Company, Inc. (Streett) filed a Statement of Objections to a Revision to Proposed Remedial Order (RPRO) which the Economic Regulatory Administration issued to the firm on February 26, 1988. In the RPRO, the ERA alleged that during the period January 1, 1978 through November 30, 1979, Streett overcharged its customers in sales of motor gasoline in violation of the price regulations set forth at 10 CFR Part 212, Subpart F. In considering Streett's objections to the RPRO, the DOE rejected Streett's claims that: (i) The ERA used the wrong data in performing its overcharge calculations, (ii) the ERA made methodological errors in its price calculations, (iii) the ERA improperly determined Streett's classes of purchasers, (iv) Streett was entitled to retroactive exception relief, (v) Streett had pre-audit period banks of unrecovered costs, and (vi) prejudgment interest should not be imposed on overcharges. Accordingly, the DOE determined that Streett's Statement of Objections be denied and the RPRO be issued as a final Remedial Order. The amount of the overcharges sustained in the Decision and Order is $3,527,080.38.

Request for Modification and/or Rescission

Washington, 3/6/88, KER-0046

The DOE issued a Decision and Order concerning the Motion for Reconsideration filed by the State of Washington. Washington sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy and the Office of Hearings and Appeals had previously held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's Motion to provide $750,000 in loans to rehabilitate branch rail lines that run through major grain producing areas of the State under the Agricultural Rail Program. The DOE found that the program would provide restitutionary benefits to the State's farmers by lowering their costs of grain and produce transportation. The DOE also found that the program would increase the fuel efficiency of trains traveling along the branch rail lines, reduce overall fuel consumption by substituting trains for trucks, and improve the quality of bulk commodity transportation services for the agricultural sector. Accordingly, the DOE concluded that the Agricultural Rail Program was an appropriate and worthwhile use of Stripper Well monies and approved Washington's Motion.

Supplemental Order

Phoenix Petroleum Company, 3/7/89, KRX-0062

The DOE issued a Supplemental Order that reduced the refund liability in a Remedial Order that was issued to Phoenix Petroleum Company on September 29, 1988. The Remedial Order found that the firm's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sale in which they did not perform any historical and traditional crude oil reselling function. Because the ERA had not convincingly matched

Phoenix's purchases and sales, the Remedial Order found that Phoenix's refund liability should be the amount of the firm's gross profits from all of its transactions, adjusted to allow the firm to retain its allowable markup in its non-layered transactions. The Remedial Order computed a tentative refund obligation and directed the ERA to provide additional information that was necessary to compute the amount of Phoenix's violation. In view of the information provided by the ERA, the DOE issued a Supplemental Order adjusting Phoenix's refund obligation.

Refund Applications

Atlantic Richfield Company/J. Meredith Bus Company, 3/9/89, RF304-1015, RF304-7448

The DOE issued a Decision and Order concerning two Applications for Refund filed by different parties on behalf of J. Meredith Bus Company (MBC). One applicant, Mr. Meredith, was the owner of the firm during the consent order period. The other applicant, National School Bus Service, Inc. (National), purchased the firm in 1987, and is the present owner. Each party claimed $1,316, the full volumetric refund amount. The DOE determined that MBC, as an independent corporate entity, is the "individual" that was injured by purchasing ARCO products and, therefore, is the entity entitled to a refund. The DOE further determined that National, as the owner of MBC's stock, is the appropriate party to represent MBC in this proceeding. The DOE concluded that National should receive a refund totalling $1,689, representing $1,316 in principal and $373 in accrued interest.

Atlantic Richfield Company/Northside Gas 'N' Wash, et al., 3/9/89, RF304-2202, et al.

The DOE issued a Decision and Order concerning forty-nine Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $61,909, representing $48,230 in principal and $13,679 in interest.

Boyd Warehouse, 3/9/89 RA272-4

On January 10, 1989, the DOE issued a Decision and Order granting a refund of $50 to Boyd Warehouse (Boyd), Case No. RF272-42643. *Philip Seaholm, et al.*, 18 DOE ¶ _____ (Case Nos. RF272-42600, *et al.* (January 10, 1989). The Appendix to that Decision and Order listed erroneous gallonage and refund figures for Boyd. Accordingly, to remedy the situation, the DOE issued a Supplemental Order granting Boyd an additional refund of $118.

Crown Central Petroleum Corporation/Brumwell's Fuel Service, et al., 3/9/89, RF313-39, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by ten purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $56,428, representing $48,856 in principal and $7,572 in interest.

Crown Central Petroleum Corporation/Home Oil Company of Jacksonville, Inc., et al., 3/7/89, RF313-2, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by eight purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $33,373, representing $28,894 in principal and $4,479 in interest.

Dorchester Gas Corp./Farmland Industries, Inc., 3/7/89, RF253-26

The DOE issued a Decision and Order granting an Application for Refund in the Dorchester Gas Corporation refund proceeding. Farmland is an agricultural cooperative, which sold Dorchester petroleum products to its member cooperatives. Farmland adequately established that it purchased 4,347,564 gallons of Dorchester product. Because Farmland is an agricultural cooperative, it is not required to provide a detailed demonstration of injury. Instead, Farmland is presumed injured and is eligible for its full allocable share. The total gallonage approved in this Decision is 4,347,564 gallons, and the total refund approved is $59,474, including both interest and principal.

Dorchester Gas Corp./Hardesty Oil Company, 3/9/89, RF253-33

The DOE issued a Decision and Order granting an Application for Refund in the Dorchester Gas Corporation refund proceeding. Hardesty is a propane retailer and an indirected purchaser of Dorchester petroleum products. Hardesty has established that it purchased 362,060 gallons of Dorchester propane from Phillips Petroleum Co. Accordingly, Hardesty's allocable share is equal to the number of gallons it purchased from Phillips, multiplied by the volumetric and by Phillips' passthrough percentage (79.56%). Because Hardesty's refund is less than $5,000, excluding interest, it is not required to provide a detailed demonstration of injury. The total refund approved in this Decision is $3,940, including both interest and principal.

Exxon Corporation/Allen D. Ludwig, et al., 3/9/89, RF307-5100, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $15,013, representing $12,877 in principal and $2,136 in interest.

Exxon Corporation/Delaware Valley Propane Company, R.B. Sahagen and Company, Inc., Arrow Gas Corporation, Delaware Valley Propane Company, 3/10/89, RF307-4184, RF307-4185, RF307-4186, RF307-4187

The DOE issued a Decision and Order granting Applications for Refund filed by Star Gas Corporation (Star) on behalf of Delaware Valley Propane Co., R.B. Sahagen and Co., and Arrow Gas Corp. The DOE treated the firms as one applicant for purposes of this proceeding. Accordingly, the volume totals from these applications were combined in order to determine Star's allocable share. Based upon its purchase of 46,666,067 gallons of Exxon refined petroleum products during the period August 19, 1973 through January 27, 1981, Star's allocable share is $11,667 (46,666,067 gallons x $0.00025=$11,667). Because Star did not provide a detailed demonstration of injury, it is eligible to receive $5,000 or 40 percent of its allocable share, whichever is greater. Accordingly, Star received a total refund of $5,830, representing $5,000 in principal and $830 in interest.

Exxon Corporation/Verdean Bodily Oil Co., et al., 3/7/89, RF307-1769, et al.

The DOE issued a Decision and Order granting a refund to five resellers of refined petroleum products from consent order funds collected from Exxon Corporation. Each firm's allocable share exceeds $5,000. Because each firm chose to limit its refund claim to the greater of $5,000 or 40 percent of its allocable share, each firm was presumed to have been injured by Exxon's alleged overcharges. Each firm received a refund of $5,833, representing $5,000 in principal and $833 in interest.

Gulf Oil Corporation/C.C. Cochran, 3/7/89, RF300–4467

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by C.C. Cochran, a reseller and consignee of covered Gulf products. The applicant elected to base its refund on the small claims and 10 percent presumptions of injury. The applicant's allocable share as a reseller is less than $5,000, and its total principal refund for both reseller and consignee gallons is less than $5,000. Therefore, it was not required to provide a detailed demonstration of injury. The applicant received a total refund of $2,140, which includes both principal and interest.

Gulf Oil Corporation/E.W. Black, 3/6/89, RF300–2196

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by E.W. Black, a consignee and a reseller of Gulf refined products. E.W. Black elected to base his refund on the appropriate presumptions of injury. E.W. Black's allocable share as a reseller is less than $5,000, and his total principal refund is less than $5,000. Therefore, he was not required to provide a detailed demonstration on injury. The refund granted to E.W. Black in this Decision is $386.

Gulf Oil Corporation/Gray's Butane Wholesale, Inc., 3/7/89, RF300–1824

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Gray's Butane Wholesale, Inc. Gray's Butane was owned and run by the same people who owned and ran Gray's Petroleum Wholesale, Inc. during the consent order period. On November 23, 1988, the DOE issued a Decision and Order granting a refund of $2,597 ($2,052 in principal and $545 in interest) to Gray's Petroleum. *Gulf Oil Corporation/Hayden's Gulf, et al.*, 18 DOE ¶ 85,273 (1988). Because the two firms were under common ownership during the consent order period, and because their combined allocable share exceeds $5,000, it is appropriate to consider them together when applying the presumptions of injury. The refund granted in this Decision is $10,982, representing $8,468 in principal and $2,514 in interest.

Gulf Oil Corporation/Gulf Oil Products J.T. Keen, 3/6/89, RF300–1933 RF300–2188

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applicants indicated that they were consignees of Gulf refined product during the consent order period. Each application was approved under the 10 percent presumption of injury for consignees. The sum of the refunds granted in this Decision is $525.

Gulf Oil Corporation/Tuttle Dist. Co., Inc., 3/6/89, RF300–2014

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Tuttle Dist. Co., Inc., a consignee and a reseller of Gulf refined products. Tuttle Dist. Co. elected to base its refund on the appropriate presumptions of injury. Tuttle Dist. Co.'s allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration of injury. The refund granted to Tuttle Dist. Co. in this Decision is $150.

James Fleming Trucking, Inc., 3/8/89, RF272–23530

The DOE issued a Decision and Order denying an Application for Refund filed by James Fleming Trucking, Inc. (JFT), a motor carrier, in the Subpart V crude oil proceedings. The DOE denied JFT's application because JFT had already been granted a refund from the Surface Transporters Escrow that was created by the Stripper Well Settlement Agreement. Under the terms of the Settlement Agreement, the applicant had to waive its right to a refund in any Subpart V crude oil proceeding. Accordingly, JFT was ineligible for a Subpart V crude oil refund.

Palo Pinto Oil & Gas/Vermont Belridge Oil Co./Vermont National Helium/Vermont Coline Gasoline Corp./Vermont Standard Oil Co. (Indiana)/Vermont, 3/6/89, RQ5–502, RQ8–503, RQ3–504, RQ2–505, RQ21–506

The DOE issued a Decision and Order denying the second-stage refund application filed by the State of Vermont in the Palo Pinto, Belridge, National Helium, Coline, and Standard Oil Co. (Indiana) special refund proceedings. Vermont requested permission to use all of its remaining second-stage refund monies for three programs. The DOE found the first two programs, involving drivers' education and curriculum development, to be insufficiently restitutionary because they would have primarily benefitted school children who were not consumers of petroleum during the periods of price controls (1973–1981). The DOE denied the third program, a plan to educate school administrators in energy efficient building management, because its beneficiaries would have been local government entities and local government officials rather than injured consumers.

Pennzoil Co./Alabama, Pennzoil Co./Alabama, 3/9/89, RQ10–479, RQ10–510

The DOE issued a Decision and Order dismissing a second-stage refund application filed by the State of Alabama in the Pennzoil Co. special refund proceeding, and approving a modified form of the same application. Alabama requested permission to use $161,313 in Pennzoil monies to fund a program of energy-efficiency improvement grants for non-profit organizations in the State. The DOE found that this program would provide restitution to injured consumers of petroleum products. Accordingly, the DOE granted Alabama's application, and allocated $161,313 to the State.

Randy's Supperette, Columbus Aircraft Maintenance, Inc., 3/10/89, RF272–35328, RF272–36867

The DOE issued a Decision and Order denying two Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Both applicants were retailers during the period August 19, 1973 through January 27, 1981. Because neither of the applicants demonstrated that it was injured by the crude oil overcharges, each was found to be ineligible for a crude oil refund.

Wallace & Wallace Fuel Oil Co./City of New York, et al., 3/6/89, RF69–5, et al.

The DOE issued a Decision and Order concerning refund applications filed by the City of New York, in the following five refund proceedings: *Wallace & Wallace Fuel Oil Co.*, 12 DOE ¶ 85,122 (1984), *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), *Oceana Terminal Corp.*, 13 DOE ¶ 85,363 (1986), *Bayside Fuel Oil Depot*, 13 DOE ¶ 85,139 (1985), and *Howard Oil Co.*, 15 DOE ¶ 85,072 (1986). The DOE found that the filings were all

incomplete, untimely, and that the City of New York had not shown good cause for the late filings. Consequently, the applications were dismissed.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of appli-cants	Total refund
Benny Ediger, *et al*	RF272-20831	3/9/89	105	$49,296
Harold Street III, *et al*	RF272-47400	3/6/89	165	$3,804

Dismissals

The following submissions were dismissed.

Name	Case No.
Albert W. Jones Exxon Service	RF307-41
Arlington Grocery	RF307-2095
Bonier Exxon	RF307-1994
C and B Marbys Exxon	RF307-1985
Charles Pinkerton Farms	RF272-60414
Charles J. George, Inc.	RF272-74435
	RF272-74438
Dell Transportation Corp	RF272-75245
Gauthier Exxon	RF307-974
Hambys Station	RF307-3679
Hwy 5 North Exxon	RF307-2922
Hwy 51 Grocery	RF307-1984
J and M Grocery	RF307-1999
J.F. Cleckley Company	RF272-75221
Jim Jauernig	RF272-59480
Joe Matthew Exxon	RF307-1981
Lamarque Independent School District.	RF272-23133
Matthew Exxon	RF307-2105
Matthew Goodwin	RF272-75255
McLaughlin Schultz, Inc.	RF272-75223
Mid-Town Exxon	RF307-2088
Mort Distributing, Inc.	RF307-926
Murpgree Exxon	RF307-2104
Norman E. Welter	RF307-3856
North Exxon	RF307-1965
North Y Exxon	RF307-1964
Proctors Exxon	RF307-2106
Service Motor Freight	RF300-2138
Sutton Exxon 2	RF307-1971
Sutton Exxon and Service	RF307-2093
Thorne Service Center	RF307-1977
Twin Lake Exxon	RF307-3680
Ulland Brothers, Inc.	RF272-67764
Uno Grocery Store	RF307-2018
W. Ashley Serv Station	RF307-1969
Wabash Independent Oil Co.	RF300-4213
Waldo's Exxon	RF307-1930
Wesco Oil Co., Inc.	RF307-7901
Westbrook Gardens	RF272-75222
Whitley Trucks, Inc.	RF272-75229
Willis Stop and Shop	RF307-2076
101 Boat Dock Service	RF307-2921
285 Central Park West	RF272-62030

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 31, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-13503 Filed 6-6-89; 8:45 am]

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Issuance of Decisions and Orders Issued During the Week of March 13 Through March 17, 1989

During the week of March 13 through March 17, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Green Bay Energy Corporation, 3/16/89, KFA-0266

The Office of Hearings and Appeals (OHA) considered an Appeal by the Green Bay Energy Corporation from a determination made by the DOE's Office of Alcohol Fuels (OAF) which denied a request submitted under the Freedom of Information Act on the grounds that no responsive documents existed. After learning that an employee of Green Bay stated that he had submitted responsive documents to the DOE whiled he was employed by a third party, the OHA granted the Appeal and remanded the case to OAF with instructions to conduct a further search for responsive documents.

Kenneth P. Brooks, 3/17/89, KFA-0269

Kenneth P. Brooks (Brooks) filed an Appeal from a determination by the Freedom of Information Authorizing Official of the Albuquerque Operations Office of the U.S. Department of Energy (DOE). This determination denied a request for information which Brooks had submitted under the Freedom of Information Act (FOIA) and Privacy Act (PA). Brooks requested all notes used by James Culpepper, Deputy Manager of the Albuquerque Operations Office of the DOE, in a personnel action involving Brooks. In considering the Appeal, the DOE found that Culpepper's notes, which were contained in his personal notebook, were not responsive to Brooks' request under the FOIA. Similarly, under the PA, the DOE found that no information existed in a DOE system of records which pertained to Brooks. Accordingly, the Appeal was denied.

Remedial Order

Tesoro Petroleum Corporation DeMenno-Kerdoon, Inc., 3/16/89, KRO-0630, KRD-0630, KRD-0631

Tesoro Petroleum Corporation (Tesoro) and DeMenno-Kerdoon, Inc. (DeMenno) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firms. Before a Remedial Order was issued by the DOE, the ERA signed Consent Orders with Tesoro and DeMenno. Subsequently, the ERA filed separate Motions to dismiss Tesoro and DeMenno-Kerdoon. In considering these Motions, the DOE determined that the consent Orders signed by the ERA with Tesoro and DeMenno settle the enforcement matters pending before the DOE in this proceeding. Accordingly, the DOE determined that the PRO issued to Tesoro and DeMenno and all related proceedings should be dismissed with prejudice.

Refund Applications

A & P Tea Company Edward Kraemer & Sons, Inc., 3/14/89, RF272-4497, RF272-7132

The DOE issued a Decision and Order granting Applications for Refund filed by A & P Tea Company (A & P) and Edward Kraemer & Sons, Inc. (Kraemer) in the crude oil overcharge refund proceeding. Both of the applicants relied on company records to determine their total consumption of refined petroleum products. Based on their volume of purchases, A & P received a refund of $777 and Kraemer received a refund of $3,692.

Airgood's Arco et al., 3/15/89, RF272–26538, et al.

The DOE issued a Decision and Order denying five applications for refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer of refined petroleum products during the crude oil price control period. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, none is eligible for a crude oil refund.

Arcile Vidrine, et al., 3/17/89, RF272–18038, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four claimants in the crude oil special refund proceeding. The four applicants, who were resellers of petroleum products, failed to demonstrate that they were injured by alleged crude oil overcharges. Accordingly, all four applications were denied.

Atlantic Richfield Company/Donald L. Wallace, et al., 3/17/89, RF304–2400, et al.

The DOE issued a Decision and Order concerning 40 Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or resellers/retailers that applied for small claim presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $78,451, representing $61,116 in principal and $17,335 in accrued interest.

Brown Stove Works, Inc., 3/13/89, RC272–17

On October 7, 1988, the DOE granted Brown Stove Works, Inc., a refund of $361 in connection with a special refund proceeding under 10 C.F.R. Part 205, Subpart V, for distribution of a portion of the crude oil funds obtained by the DOE. *Jon L. Neiman Trust*, 18 DOE ¶ 85,017 (1988). Brown Stove Works should not have received this refund because it was based on a duplicate refund claim. Accordingly, the DOE issued a Supplemental Order rescinding the duplicate refund granted to Brown Stove Works, Inc.

Crown Central Petroleum Corporation/Herring Petroleum Products Co., 3/13/89, RF313–58

The DOE issued a Decision and Order concerning an Application for Refund filed by Herring Petroleum Products Co., in the Crown Central Petroleum Corporation special refund proceeding. Information submitted by Herring indicated that the firm was a spot purchaser of Crown refined petroleum products during the consent order period. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), a spot purchaser is presumed to be ineligible for a refund unless it demonstrates that its purchases of Crown products were sold to base period customers at a loss which was not subsequently recouped. Herring did not submit any information either to establish that it was not a spot purchaser or to rebut the spot purchaser presumption. Accordingly, Herring's request for a refund was denied.

Exxon Corporation/Lykes Steamship Co., 3/16/89, RF307–9635

The DOE issues a Supplemental Decision and Order to Lykes Steamship Company (Lykes) in the Exxon Corp. special refund proceeding. In *Exxon Corp./Lindstedt Oil*, 18 DOE ¶ 85,715 (1989), the DOE granted Lykes an incorrect refund due to the fact that the firm had been classified as a reseller. In fact, Lykes was an end-user and was eligible to receive its full allocable share. Accordingly, Lykes was granted a supplemental refund of $4,347 ($3,729 principal and $618 interest).

Exxon Corporation/Newark Exxon et al., 3/14/89, RF307–5132 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, is $29,420 ($25,231 in principal and $4,189 in interest).

Exxon Corporation/R.M. Massengill Bulk Plant Northeastern Oil Co., Inc. Jefferies Bros., Inc., 3/14/89, RF307–3267, RF307–4433, RF307–4499

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. The Applicants, wholesale distributors of Exxon products, each had an allocable share in excess of $5,000, and was eligible to receive as its refund the larger of $5,000 or 40% of its allocable share up to $50,000. Each applicant was granted a refund of $5,000, plus interest. The sum of the refunds granted in this Decision is $17,490 ($15,000 in principal and $2,490 in interest).

Fairbury Light & Water Co., 3/13/89, FR272–24046

The DOE issued a Decision and Order approving an Application for Refund filed by Fairbury Light and Water Company in the Subpart V Crude Oil proceeding. Fairbury, a purchaser of petroleum products and a regulated utility, stated that it would notify the appropriate regulatory agency of any refund received and pass the entire amount through to its customers. Accordingly, it was not required to demonstrate injury. The total refund approved in this Decision was $1,084.

Firstmiss Inc., 3/15/89, RF272–29279, RD272–29279

The DOE granted a fertilizer producer, FirstMiss, Inc., a refund from the crude oil monies made available for distribution by the Office of Hearings and Appeals. A group of States submitted objections and a Motion for Discovery which the DOE denied. FirstMiss will receive a refund of $6,041.

Getty Oil Company/Getty of Fort Lee, 3/16/89, RF265–2549

The DOE issued a Decision and Order concerning an Application for Refund filed by Getty of Fort Lee (Fort Lee), a retailer of motor gasoline that was covered in the Getty Oil Company Special Refund Proceeding. Based on the profit margin data submitted by Fort Lee, the DOE approximated the firm's unrecouped costs for motor gasoline and determined that its cumulative cost bank for that product was in excess of its volumetric refund. Fort Lee also provided purchase cost data for motor gasoline for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Fort Lee should receive a refund consisting of its full volumetric allocation amount for its purchases of motor gasoline from Getty. The total refund approved in this Decision is $27,822, representing $13,495 in principal and $14,327 in accrued interest.

Groton School District #6–3, et al., 3/17/89, RF272–31756 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for a variety of purposes including farming, heating, and transportation, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the

products it claimed and was therefore presumed injured. The sum of the refunds granted in this decision is $3,636.

Gulf Oil Corporation/Belmore Gulf Service, et al., 3/16/89, RF300-6413, et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $84,667.

Gulf Oil Corporation/Cass City Oil & Gas Co., Bestrom Oil Co., Inc., 3/24/89, RF300-4102, RF300-4103

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $24,308.

Gulf Oil Corporation/Crutcher Oil Company, Inc., 3/17/89, RF300-2738

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Crutcher Oil Company, a reseller and consignee of Gulf petroleum products. For its consigned gallons, Crutcher attempted to prove injury under the methodology employed in the first Gulf proceeding. Crutcher equated its level of economic harm to the percentage market share loss it experienced from 1973 to 1981, with no breakdown for the intervening years. The OHA decided that injury could be more accurately calculated on a yearly basis. Crutcher's injury calculation was recalculated on the basis of the market share loss during each individual year of the consent order period. While the DOE found that the revised calculation showed only a minimal injury, the DOE concluded that the method did not lead to the definitive conclusion of an injury below the presumptive level. Accordingly, Crutcher's application was approved under the 10 percent and small claims presumptions. The amount of the refund granted was $2,366.

Gulf Oil Corporation/Flynn Oil Company, Inc., 3/15/89, RF300-2375

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Flynn Oil Company, Inc., a consignee and a reseller of Gulf refined products. Flynn Oil Company elected to base its refund on the appropriate presumptions of injury. Flynn Oil Company's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Flynn Oil Company in this Decision is $441.

Gulf Oil Corporation/Great Gas & Oil Company, 3/14/89, RF300-2038

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Great Gas & Oil Company, a consignee and a reseller of Gulf refined products. Great Gas & Oil elected to base its refund on the appropriate presumptions of injury. Great Gas & Oil's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Great Gas & Oil in this Decision is $2,199.

Gulf Oil Corporation/Hagood Oil Company, S.W. Faunt, 3/16/89, RF300-4401, RF300-4404

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applicants indicated that they were consignees of Gulf products during the consent order period. Neither applicant attempted to prove injury, and instead, elected the 10 percent injury presumption for Gulf consignees. Therefore, each applicant will receive a refund equal to 10 percent of its allocable share (excluding interest). The sum of the refunds granted in this Decision, which includes both principal and interest, is $1,620.

Gulf Oil Corporation/Polar Industries, Inc., 3/15/89, RF300-992

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Polar Industries, Inc. (Polar). Polar had filed another Application for Refund in this proceeding (Case No. RF300-1227), and on October 18, 1988, was granted a principal refund of $5,000 under the 40 percent presumption of injury. *Gulf Oil Corporation/Buckley & Scott*, 18 DOE ¶ 85,067 (1988). In this current decision, the DOE determined that the gallons claimed by Polar in Case No. RF300-992 did not entitle the firm to an additional refund. Even after accounting for the gallons in Case No. RF300-992, $5,000 still exceeded 40 percent of Polar's allocable share. Therefore, because the DOE had already awarded Polar a principal refund of $5,000 in Case No. RF300-1227, the DOE denied Polar's other Application (Case No. RF300-992).

Gulf Oil Corporation/Purmax Oil Company, et al., 3/15/89, RF300-5704, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant was approved using a presumptin of injury. The sum of the refunds granted in this Decision is $76,927.

Hawkins Farms, 3/14/89, RC272-20

A Subpart V crude oil refund was granted to Hawkins Farms in *Bob Abernathy*, Case Nos. RF272-10360 *et al.* (August 16, 1988). The U.S. Postal Service returned the refund check as undeliverable, however. Subsequent attempts to locate the applicant have failed. Accordingly, the DOE issued a supplemental order rescinding the refund granted to Hawkins Farms.

Intermountain Transportation, Co., 3/17/89, RF272-19199

The DOE issued a Decision and Order denying the Application for Refund filed by Intermountain Transportation Company in the Subpart V crude oil refund proceedings. Intermountain Transportation Company had previously received a refund from the Surface Transporter Escrow ands thus was ineligible to receive a refund in the Subpart V crude oil proceedings.

IOWA Power & Light Co., 3/16/89, RA272-5

On April 8, 1988, the Office of Hearings and Appeals granted a refund of $10,621 to Iowa Power & Light Company in the Crude Oil Subpart V refund proceeding (Case No. RF272-214). The refund amount granted in that decision was calcuated incorrectly and is corrected to $10,631 in the present decision.

Joliet Army Ammunition, 3/14/89, RF272-36797

The DOE issued a Decision and Order denying an Application for Refund filed by Uniroyal Chemical Company, Inc. (Uniroyal) on behalf of the Joilet Army Ammunition Plant (Joliet) in the Subpart V crude oil proceedings. Uniroyal was a government contractor under a cost-reimbursable plus fixed fee contract, and was found to be ineligible for a crude oil refund.

Ken's Professional Waterproofing, 3/15/89, RF272-65929

The DOE issued a Decision and Order granting a refund of $208 from crude oil overcharge funds to Ken's Professional Waterproofing, an end-user of refined petroleum products. The DOE pointed out that Ken's had used a filing service, Federal Refunds, Inc. (FRI), to prepare and submit its refund application. After reviewing FRI's practices, the DOE determined that it did not have confidence in that firm's ability to accurately disburse refunds to its clients. Accordingly, the DOE determined that the refund should be sent directly to Ken's rather than to the agent, FRI.

Kingsford Products Company, 3/17/89, RF272–2466

The DOE issued a Decision granting Kingsford Products Company (Kingsford) a Subpart V crude oil refund. Kingsford demonstrated that it was an end-user of the petroleum products that form the basis of its refund claim. Because of the end-user presumption of injury, Kingsford was not required to submit a detailed demonstration of injury and is eligible to receive its full allocable share. Accordingly, Kingsford was granted a refund of $3,699, which is based on its purchases of 18,497,166 gallons of refined petroleum products. Kingsford will automatically be granted additional refunds as additional crude oil refund monies become available.

Larry Biss, 3/16/89, RA272–6

The DOE issued a Supplemental Decision and Order to Larry Biss in the Subpart V crude oil refund proceeding. In *De Rose Distributors*, 18 DOE ¶ 85,307 (1988), the DOE granted Mr. Biss a refund based upon an incorrect volume. Accordingly, Biss was granted a supplemental refund of $14.

Murphy Oil Corp., Deltic Farm & Timber Co., Inc., 3/13/89, RF309–254

The DOE issued a Decision and Order denying an Application for Refund filed in the Murphy Oil Corporation special refund proceeding by Deltic Farm & Timber Co., Inc., a wholly-owned subsidiary of Murphy. It is the general position of the DOE that subsidiaries are ineligible to receive refunds from consent order monies made available by their parent firm as this would effectively disburse a portion of the benefit of a refund to the consent order firm itself. Accordingly, the application of Deltic Farm & Timber Co., Inc. was denied.

Murphy Oil Corporation/K Oil Co., Inc. et al., 3/15/89, RF309–337 et al.

The DOE issued a Decision and Order granting applications filed by eight purchasers of Murphy refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Murphy. The sum of the refunds approved in this Decision was $25,012, representing $21,720 in principal plus $3,292 in accrued interest.

Murphy Oil Corp./Ulva Rhodes Murrell's Spur Station, 3/15/89, RF309–928, RF309–929

The Department of Energy issued a Supplemental Order concerning the Applications for Refund filed by Ulva Rhodes and Murrell's Spur Station in the Murphy Oil Corporation special refund proceeding. *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). In the case of Ulva Rhodes, the applicant was granted an additional $29 to rectify an administrative error made in *Murphy Oil Corp./Lakehead Pipe Line Co.*, 18 DOE ¶ 85,557 (1989). In the case of Murrell's Spur Station, the applicant's duplicate refund payment granted in *Murphy Oil Corp./Florida Power Corp.*, 18 DOE ¶ 85,627 (1989) was rescinded.

New York State Electric and Gas Corporation, 3/16/89, RF272–31590

The DOE issued a Decision and Order granting a refund in the Subpart B crude oil proceeding to New York State Electric and Gas Corporation (NYSEG). During the period from August 19, 1973 through January 27, 1981, NYSEG operated an investor-owned utility. The DOE found that NYSEG submitted sufficient documentation to support its claim. Additionally, NYSEG certified that it would pass through any refund granted. In reaching its detemination, the DOE rejected the comments submitted by a group of States in opposition to the granting of this refund. Specifically, the DOE found that the States had not demonstrated that NYSEG was ineligible to receive a refund as a utility. Accordingly, the DOE approved a refund of $8,995 to NYSEG.

Ralph's Chevron Service et al., 3/14/89, RF272–27253 et al.

The DOE issued a Decision and Order denying six Applications for Refund from crude oil overcharge funds. The applicants were either retailers or resellers during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to crude oil overcharges, none was fund eligible for a crude oil refund.

Sherherd Public Schools et al., 3/15/89, RF272–112 et al.

The DOE issued a Decision and Order granting refunds in the Subpart V crude oil refund proceeding to 35 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged crude oil overcharges. Each applicant submitted actual purchase volumes or reasonable estimates of its purchase volume. The sum of the refunds granted in this Decision is $26,572.

Springfield Township, et al., 3/15/89, RF272–18003, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 36 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $63,646. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Standard Oil Co. (Indiana)/Nebraska, 3/16/89, RQ251–509

The DOE issued a Supplemental Order which authorized the use of $264,150 by Nebraska for the second stage restitutionary program approved by the Office of Hearings and Appeals (OHA) on February 13, 1989 (Case No. RQ251–493). In doing so, OHA rescinded that part of the February 13 Order which granted Nebraska a total of $251,571 for use in the program.

Tidwell's Express et al., 3/14/89, RF272–4279 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 10 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $1,711.

Total Petroleum, Inc./Criswell Petroleum Products Co. et al., 3/14/89, RF310–94 et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the

DOE through a consent order entered into with Total. Each of the applicants was either an end-user or a reseller whose allocable share made it eligible for either a small claims or medium range presumption of injury refund. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $34,894 ($30,011 principal plus $4,883 interest).

Tri-County Implement et al., 3/15/89, RF272-31745 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used petroleum products for a variety of purposes including farming, heating, and transportation, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this decision is $5,533.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders.

Name	Case No.	Date	No. of applicants	Total refund
Mrs. Hanna Eggers *et al.*	RF272-48800	3/14/89	139	$3,895
Wilrite Realty Corp. *et al.*	RF272-49200	3/14/89	132	$3,422

Dismissals

The following submissions were dismissed:

Name	Case No.
Bronx Muncipal Hospital Center	RF272-31162
Chelsea London Co	RF272-49193
City of Mineola	RF272-75312
City Wide Delivery Service	RF300-7891
Clarence E. Sanders	RF272-75325
Clarkedale Farms, Inc	RF272-59899
Continental Grain Company	RF272-20929
Dave's Janitorial Cleaning Service	RF272-1847
Davison Community Schools	RF272-37375
Dayton Towers Corporation	RF272-59837
Dipietro's Gulf Service	RF300-8483
East Side Gulf	RF300-9891
El Paso Sand Products	RF272-69551
Erwin Brunhoeber	RF300-10330
F H Sands Sons Inc	RF300-8558
Falls Church Servicenter	RF307-226
Finn Gulf/E.E. Finn	RF300-18
Garland Wayne Carruthers	RF300-10331
Gene Anderson	RF300-10342
Guy Noller	RF272-50262
Home Oil Co. of Jacksonville, Inc	RF313-2
Jack's Service Station	RF300-7710
Janna Kirkwood	RF300-10328
Johnston Oil Company, Inc	RF300-5601
James O'Neal	RF300-10301
Judith Basin County	RF272-75241
Lambs Gulf Service	RF304-3748
Lynn Harvey	RF272-75232
Martin Bulk Plant	RF300-7658
Mass. Municipal Wholesale Electric Co.	RF272-59695
Mertz Oil Co	RF300-8450
Murdock Service Station	RF300-7925
Nazionale Gulf	RF300-129
Page Oil, Inc	RF313-31
R&F Coal Company	RF272-74478
Ray Baldersom	RF272-60343
Ray Gray	RF300-10325
Riverside Sand & Gravel Co	RF272-52254
Sals Gulf	RF300-7696
Schaefer Shell Service	RF315-1007
Teagues General Store	RF300-7308
Theodore E. Tinkham	RF272-53330
Thomas P. Reidy, Inc	HRO-0265
Tom Country Corner IGA	RF300-7641
Trepanier Farms	RF272-49741
Unified School District #259	RF272-27990
Walter Harrison	RF272-51682
Wayland Bulk Plant	RF300-7657
Wayne Vickery	RF300-10327
Zimmerman Farms	RF272-70686
21 Gramarcy Park South	RF272-49194
49 East Owners Corp	RF272-49183

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 31, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-13504 Filed 6-6-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400031; FRL-3599-6]

Fee Waiver; Community Right-to-Know Pilot Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Is announcing the establishment of a limited pilot program to waive fees for a small sample of Local Emergency Planning Committees (LEPCs) for accessing the national toxic chemical release inventory (TRI) data base. The TRI data base, which will be available in June through the National Library of Medicine's TOXNET system, was established by EPA under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). It is an inventory of yearly emissions of toxic chemicals to air, land, and water. Title III is the Emergency Planning and Community Right-to-Know Act of 1986. The legislative history of the Act makes clear that EPA has the authority to waive or reduce the fee for accessing the data base if it is in the public interest to do so. EPA has initiated this pilot program to evaluate the need for, and feasibility of implementing such a fee waiver program. LEPCs and those who wish to apply for a fee waiver in conjunction with their LEPC may contact their EPA Regional Office for the guidance document that explains how they can participate in the fee waiver pilot program. All requests for a fee waiver must be in writing and based on the guidelines described in that guidance document. The LEPCs will send all the requests and project descriptions to their State Emergency Response Commission and EPA Regional Office by July 21, 1989. Final selection of projects will be made at EPA headquarters by August 25, 1989.

DATES: By July 21, 1989, all project descriptions and requests for fee waivers must be submitted to the State Emergency Response Commission and EPA Regional Office representing the project proposer's area. Fee waiver pilot program projects will be selected by August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Eileen A. Fesco, Project Manager, Emergency Planning and Community Right-to-know Hotline, Environmental Protection Agency, 401 M St., SW., Mail

Stop WH–562A, Washington, DC 20460, Toll free: 800–535–0202, in Washington, DC and Alaska, (202) 479–2449.

SUPPLEMENTARY INFORMATION: EPA is establishing a pilot program to waive fees for LEPCs to access the national toxic chemical release inventory data base. EPA has initiated this pilot program in order to evaluate the need for, and feasibility of implementing such a fee waiver program.

I. Introduction

A. Statutory Authority

Section 313(j) of Title III of SARA directs EPA to make the national toxic chemical release inventory (TRI) data base accessible by computer telecommunication to any person on a cost reimbursable basis. This section of the act was discussed in the Conference Report that accompanied H.R. 2005:

> The Administrator is required to establish and maintain in a computer database a national toxic chemical inventory based on data submitted under this section. These data are required to be made accessible to any person by computer telecommunication and other means on a cost reimbursable basis. H. Rep. 962, 99th Con., 2nd. Sess. 299 (1986). The Conference Report went on to note: However, the resulting fee schedule is not to be prohibitive with regard to public access, and the Administrator may reduce or waive otherwise applicable fees when, in the Administrator's judgment, such action is in the public interest and consistent with the purposes of this section.

By seeking to determine the need for a fee waiver program, EPA is responding to Congress' request that the public's access to the TRI data base not be limited by the public's inability to pay for the access as long as such waiver of fees is in the public interest and consistent with the purposes of section 313.

B. Background

The TRI data base will be available on-line in June through the National Library of Medicine's (NLM) TOXNET system. Hourly fees for the use of this system are $25.70 for prime time and $18.60 for non-prime time. Current prime time is 10 a.m. to 5 p.m. Eastern Time, Monday through Friday. All other time is non-prime. EPA proposes to establish a pilot program to waive fees for a limited number of LEPCs.

Title III provided for the States to establish LEPCs whose members must represent the broad constituencies of the communities they serve. The LEPCs receive information generated by various reporting requirements of Title III from local businesses and other facilities about the presence of and emissions of chemicals at these local facilities. LEPCs use this information to plan their response to chemical emergencies. The LEPCs were selected to be the primary recipients of the fee waivers for this pilot project because they are ideally placed in their community to examine and respond to the information. The allotment of $30,000 for this pilot will be sufficient to provide limited fee waivers for approximately $1,200 to $1,600 dollars for approximately 15 to 20 LEPCs.

A fee waiver policy has been under discussion in EPA for some time. Public interest groups and others have expressed concern that access to the data base not be limited by economic need. Further, EPA wants to encourage data access. The legislative history of the Act makes clear that EPA has the authority to waive fees for these purposes.

C. Objectives of a Fee Waiver Program

A fee waiver program serves a number of purposes: (1) ensures that access to the TRI data base is not limited by economic need; and (2) encourages initial data access with the long-term goal of increasing data use.

II. The Pilot Project

A. Objectives of the Fee Waiver Pilot Program

This fee waiver pilot program will help EPA meet the objectives mentioned in the previous paragraph but it will mainly serve three other purposes: (1) Assist EPA in its evaluation of the need for, interest in, and the utility of fee waivers; (2) assist EPA in its evaluation of the feasibility of implementing a fee waiver program; and (3) assist EPA in its evaluation of its choice of entities to receive fee waivers: LEPCs and others the LEPCs might sponsor for the waiver.

B. Selection Criteria

The following is a summary of criteria that EPA and State authorities will use in their review and selection of projects for the fee waiver pilot program.

1. The project must be in the public interest. The following are some general example of projects that meet this criterion.

(a) *LEPC Project.* The LEPC could analyze the TRI data's relation to information reported to it under other Title III requirements to obtain a "chemical profile" of that district and apply this information in a variety of ways.

(b) *Library Project.* A public library that applies for a fee waiver and is accepted would be sponsored by their area LEPC and the LEPC would manage the fee waiver. The library personnel could familiarize themselves with the TOXNET data base. They could then serve as resources for people in the community interested in accessing the data. The library personnel could access the data for the public or instruct the public in how to access the data base themselves. Any printed material produced could be kept on file at the library.

(c) *Local College or University.* The LEPC could sponsor and manage a fee waiver going to the local public college or university which offers evening courses. The college could offer a TRI course which would include instruction in the accessing and manipulation of the TRI data base. The fee waiver would cover costs incurred by the learning institution when accessing the data base (on-line cost).

(d) *Local Citizen's Groups.* The LEPC could sponsor and manage a fee waiver awarded to a public interest group who wishes to access the TRI data base and share the information with their members and/or other interested individuals. The group could give a number of presentations to groups using overhead projectors which will project the "live" image on the computer screen to a larger screen so a much larger number of people could see the data. These presentations could be geared toward explaining the purpose of section 313, what the TRI data are, and what individuals can do with this information. The fee waiver would cover the on-line time cost.

2. The fee waiver will be made available to the LEPCs established under Title III of SARA. As noted above, other individuals or organizations may work with their LEPC to apply for the fee waiver pilot program. If a project involves an entity other than an LEPC, the LEPC serving that entity's geographic area will serve as the sponsor of that entity and that LEPC will be responsible for managing the waiver given to that entity.

3. The LEPC which applies for the fee waiver for its own use, rather than sponsoring another individual or group, will have the following characteristics: (a) Broad-based representation as required under Title III of SARA; (b) viability (e.g., has held meetings, has developed or is developing an emergency plan); (c) demonstrated commitment to and involvement with their community; and (d) capacity to disseminate information to their community.

4. The project proposer (LEPC or those sponsored by their LEPC) must explain why they could not support the normal access charge.

5. The LEPC must ensure that the public will have direct access to the one-line data bases or whatever product(s) are generated by the pilot.

6. The project proposers must have reliability and convenient access to a computer with the necessary hardware and software to connect to the NLM system.

7. The project proposers must demonstrate an ability and a willingness to provide a brief evaluation report at the conclusion of the project.

8. The project must serve the evaluation purposes of the pilot. The pilot projects should help EPA evaluates:

a. The need for, interest in, and utility of fee waivers.

b. The feasibility of implementing a fee waiver program.

c. The Agency's choice of entities to receive fee waivers.

EPA will seek a sample of projects which will: reflect Regional and LEPC diversity; present a broad range of project types; and represent a range of recipient types.

EPA will establish an agreement with each recipient that spells out: (1) That recipient's responsibility for monitoring the hours they have used; (2) their acceptance of responsibility for paying for any charges they incur in excess of their allotted time; and (3) their obligation to notify EPA when they have used up their allotted time.

C. Participating in the Fee Waiver Pilot

If you are eligible for a fee waiver and have a project that is in the public interest you may contact your EPA Regional Office for the guidance document that explains how you may participate in the fee waiver pilot project.

For Fee Waiver Pilot Program Applications Contact

EPA—Region I (CT, MA, ME, NH, RI, VT), Dwight Peavey, Section 313 Coordinator, Pesticides and Toxics Branch, USEPA Region 1 (APT2311), JFK Federal Building, Boston, MA 02203, (617) 565–3230.

EPA—Region II (NJ, NY, PR, VI), Nora Lopez, Section 313 Coordinator, Pesticides and Toxics Substances Branch, USEPA Region 2 (MS240), Woodbridge Avenue, Building 209, Edison, NJ 08837, (201) 906–6890.

EPA—Region III (DC, DE, MD, PA, VA, WV), Kurt Elsner, Section 313 Coordinator, Toxics and Pesticides Branch, USEPA Region 3 (3HW42), 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–1260.

EPA—Region iV (AL, FL, GA, KY, MS, NC, SC, TN), Jill Perry, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–5053.

EPA—Region V (IL, IN, MI, MN, OH), Dennis Wesolowski, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 5 (5SPT–7), 230 South Dearborn Street, Chicago, IL 60604, (312) 353–5907).

EPA—Region VI (AR, LA, MN, OK, TX), Gerald Carney, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 6 (6TPT), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 655–7244.

EPA—Region VII (IA, KS, MO, NE), Ed Vest, Section 313 Coordinator, Congressional and Intergovernmental Relations, USEPA Region 7 (CIGL), 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236–2806.

EPA—Region VIII (CO, MT, ND, SD, UT, WY), Diane Groh, Section 313 Coordinator, Toxic Substances Branch, USEPA, Region 8 (8AT–TS), 999 18th Street, Denver, CO 80202–2405, (303) 293–1730.

EPA—Region IX (AS, AZ, CA, GU, HI, MP, NV), Kathleen Goforth, Section 313 Coordinator, Pesticide and Toxics Branch, USEPA Region 9 (A–4–3), 211 Main Street, San Francisco, CA 94105, (415) 974–7280).

EPA—Region X (AK, ID, OR, WA), Phil Wong, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 10 (AT083), 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–4016).

D. Project Selection Process

LEPCs and other interested entites will contact the EPA Regional Office in their area for the fee waiver guidance document. LEPCs interested in obtaining a fee waiver for a project will simultaneously submit their request and project description to their State Emergency Response Commission (SERC) and to the appropriate EPA Regional Office by July 21, 1989. Individuals and other groups who wish to be sponsored for a fee waiver by their LEPC should submit their project description to the LEPC serving their geographic area. The SERCs and EPA Regional Offices will review each project description submitted by their LEPCs, confer, and highlight those projects that best meet the selection criteria discussed earlier in unit II.B. On or before August 11, 1989, the SERCs and EPA Regional Offices will forward all the project descriptions along with their recommendations for funding to the Office of Toxic Substances at EPA headquarters in Washington, DC.

Final selection of projects will be made at EPA headquarters in order to ensure a good distribution of projects for the purposes of the pilot. Recipients of the fee waivers will be notified of their selection by EPA headquarters on or before August 25, 1989. At that time the recipients will be given information on how to access the NLM data base. Those not chosen for the pilot will also be notified in writing by EPA.

Dated: May 30, 1989.

Dwain Winters,

Acting Director, Office of Toxic Substances.

[FR Doc. 89–13476 Filed 6–6–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59869; FRL–3599–4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 7 such PMN(s) and provides a summary of each.

DATE: Close of Review Periods:

Y 89–125, 89–126, 89–127—May 28, 1989.

Y 89–128, 89–129—May 31, 1989.

Y 89–130—June 5, 1989.

Y 89–131—June 11, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential

document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–125

Manufacturer. Confidential.
Chemical. (G) Olyether urethane.
Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

Y 89–126

Maufacturer. Confidential.
Chemcial. (G) Polyester resin.
Use/Production. (G) An additive used in the plastic industry. Prod. range: Confidential.

Y 89–127

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) An additive used in the plastic industry. Prod. range: Confidential.

Y 89–128

Manufacturer. Confidential.
Chemical. (G) Long oil alkyl resin.
Use/Production. (s) Architectual finishes. Prod. range: Confidential.

Y 89–129

Manufacturer. C.J. Osborn.
Chemical. (G) Alkyd.
Use/Production. (S) Pigmented and finishes. Prod. range: Confidential.

Y 89–130

Manufacturer. C.J. Osborn.
Chemical. (G) Saturated polyester.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 89–131

Manufacturer. Confidential.
Chemical. (S) Polymer of neopentyl glycol, trimethylolpropane, isophthalic acid, 1,4-cyclohexanedicarboxylic acid.
Use/Production. (S) Polymer for appliance coating. Prod. range: 100,000–250,000 kg/yr.

Dated: May 26, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89–13475 Filed 6–6–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hererby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200253
Title: Maryland Port Administration Terminal Agreement
Parties: Maryland Port Administration, Orient Overseas Container Line (OOCL), Clark Maryland Terminals, Inc. (CMTI)
Synopsis: The Agreement provides CMTI with the lease of 11.67 acres in Areas 503 and 504 at the Dundalk Marine Terminal to handle OOCL cargo. CMTI will receive a 50% discount from the applicable tariff rates for dockage, wharfage and crane hire for cargo attributable to OOCL and a 12% discount from the applicable tariff rates for acreage rentals attributable to OOCL.

Agreement No.: 224–200078–003
Title: Maryland Port Administration Terminal Agreement
Parties: Maryland Port Administration Clark Maryland Terminals, Inc. (CMTI)
Synopsis: The Agreement provides for: (1) Elimination of 8.7352 acres in Area 503 and 2.9348 acres in Area 504 at the Dundalk Marine Terminal from the basic lease agreement; (2) revision of the tonnage discount scale until October 1, 1989, at which time the discount scale will revert back to the scale in the basic agreement; and (3) reduces the CMTI minimum tonnage commitment to 250,000 tons and 150 vessel/barge calls annually.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

Dated: June 2, 1989.

[FR Doc. 89–13528 Filed 6–6–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations Interested persons should consult this section before communicating with the Commission regarding pending agreement.

Agreement No.: 203–011240.
Title: Florida-Western Caribbean Shipowners and Operators Assocation Agreement.
Parties: Tropical Shipping & Construction Co., Ltd. Hybur Ltd.
Synopsis: The proposed Agreement would permit the parties to discuss and agree upon rates and conditions of service in the trade between U.S. Atlantic and Gulf Coast ports and points and Western Caribbean ports and points in Belize. The parties are not authorized to publish a common tariff and adherence to any agreement reached would be voluntary. The Agreement would also permit the parties to charter space aboard each other's vessels in the Agreement trade.

By Order of the Federal Martime Commission.

Ronald D. Murphy,

Asistant Secretary,

Dated: June 10, 1989.

[FR Doc. 89–13427 Filed 6–6–89; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0080, General Services Administration Acquisition Regulations Part 5342 Contract Financing, GSA Form 1142. This form is used by GSA regions or the contractors to ensure that all adjustments and claims have been made before contract closeout. Building service contractors are required to submit a release of claims before final payment.

AGENCY: Office of GSA Acquisition Policy and Regulations (V), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Firms responding, 2,000; responses, 1 per year; average hours per response, .1; burden hours, 200.

For Further Information Contact: Shirley Scott, 202–523–4765.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: May 25, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–13430 Filed 6–6–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Child Support Enforcement; Applications for Grants

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of income security policy from States, public, non-profit, and for-profit organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research relating to national policy concerns in the area of child support enforcement. The following paragraphs describe this general area of interest in greater detail by enumerating high priority research areas. The questions they contain are intended to illustrate specific concerns. Applications should be for projects that will address one or more of the priority areas discussed below; other, closely related issues may also be included if they are shown to be relevant to the general area of interest.

A broad range of methodologies are acceptable for the purpose of this grant competition. However, all proposed projects should embody a sound theoretical base upon which new and original empirical work, employing the most useful and relevant data bases, is built. Applicants must demonstrate knowledge of past and current research relating to the priority area under consideration. They must also demonstrate access to data adequate to conduct the proposed study.

Several national survey data sets are available for child support research and have been used in the past. Among them are the Current Population Survey (CPS), the Survey of Income and Program Participation (SIPP), the Panel Study of Income Dynamics (PSID), the Natonal Longitudinal Study of the High School Class of 1972 (NLS–72), High School and Beyond (HSB), and the National Longitudinal Survey of Youth (NLSY).

The April CPS surveys for 1979, 1982, 1984, and 1986 had supplemental alimony and child support questions. As a result of the CPS sample design, (a rotating sample is used that has roughly three-fourths of the respondents for the current month participating in the survey the following month) the responses of a majority of the April participants could be matched with their responses to the annual income supplemental survey given each March. These March/April match files have become a primary informational source for child support research.

The SIPP is a relatively new longitudinal survey that asks respondents to provide detailed information concerning monthly income and welfare program participation. The first panel of interviews was begun in 1984. All nine waves of that panel are now available for analysis. In general, interviews are conducted every four months for 32 or 36 months. Along with core questions asked at each interview, various supplemental surveys are conducted. Support given for persons outside the current household, and the receipt of alimony and child support are among the additional questionnaire topics.

The PSID has tracked a high percentage of the members of the original 5,000 survey households since 1968 with annual follow-up interviews. Over that time two generations of households and families have formed and divided to provide researchers with extensive data on changes in family formation.

The National Longitudinal Study of the High School Class of 1972 (NLS–72) and the High School and Beyond (HSB) survey, similar to the PSID, have followed several thousand members of the 1972 high school graduation class and high school sophomores and seniors in 1980, respectively, with interviews every two or three years. These data sources provide information through the participants' early adulthood, the time when most persons are making family formation changes through marriage, child bearing, and divorce.

The National Longitudinal Survey of Youth (NLSY) began in 1979 with a sample of 11,000 respondents age fourteen through twenty-one. The data set currently contains about 25,000 variables on anti-social behavior, fertility, child-care employment, training, and education over nine straight years. Unique to the NLSY is its information provided by the male respondents about their experience fathering children both in and out-of-wedlock, and their payment of child support.

Several other national surveys, while not having been used extensively for child support research, may also provide opportunities for examining some of the issues we present below. The National Survey of Consumer Finances of 1983 and the follow-up in 1986 contain detailed data about household accumulation of assets and debts. The 1986 follow-up asked in-depth about changes in the marital status of the household members since the first survey. Individuals were asked about court-ordered alimony, child support and health care, and the division of assets and debts as a result of the marital break-up. This information can be linked with employment and income responses from both surveys to examine, for example, the labor force response to changes in the family.

The National Survey of Children began in 1976 by interviewing children age seven through eleven in 1976. Since then two follow-up interviews have been conducted, wave 2 in 1981 and wave 3 in 1987. The recently completed third wave investigated the impact of early pregnancy and parenthood on the lives of teenage parents. The National Survey of Families and Households provides information about childhood family living arrangements, homeleaving experiences, marital and cohabitational experiences, and employment, educational, and fertility histories for adults in 13,000 households. With these surveys, questions concerning parenting outcomes for teenagers can be examined from the standpoint of the environment in which they grew up.

The National Survey of Family Growth, in its third cycle in 1982, interviewed 7,969 women between the ages of 15 and 44. While the first two surveys excluded never-married childless women, the third interviewed women regardless of their marital status. The surveys investigate the fertility histories of women from a family planning standpoint.

Applicants may also propose projects that utilize data bases other than national data sets. The Federal Office of Child Support Enforcement collects data from the states and publishes it in their *Annual Report to Congress.* The latest report was the twelfth annual. Applicants are encouraged to obtain copies of these reports by writing to The National Child Support Enforcement Reference Center, 370 L'Enfant Promenade, SW., Washington, DC 20447, or by telephoning the Reference Center at 202–252–5430.

While data collected by the Federal Office of Child Support Enforcement are generally not available in computer readable form, a public use data tape of the statistics published in the Annual Reports is under development. Applicants are encouraged to refer to the data published in the reports when developing their proposals, but to assume the data will be available in computer readable form by the time they are to begin their projects.

Researchers are also encouraged to approach state Child Support Enforcement offices to discuss what data may be available at the state and local level. For some issues state data bases may contain more data than are submitted to the Federal enforcement office. Other small scale data collection projects are likewise welcomed. Demonstration projects, however, will not be funded.

1. The high priority research areas for which applications for a proposed research program are most desired are as follows:

a. Financing State Child Support Enforcement. Legislation in 1975 authorized Federal matching funds to states for enforcing child support obligations. Along with enforcement services, the local child support enforcement (CSE) offices assist in locating absent parents, establishing paternity, and obtaining child and spousal support awards. The role of the Federal Government is to fund, monitor, and evaluate state programs, provide technical assistance, and in certain instances give direct assistance in locating absent parents and obtaining support payments from them. Basic responsibility for administering the program is left to the states.

The program requires the provision of child support enforcement services for both welfare and non-welfare families. Parents receiving benefits under the Aid to Families with Dependent Children (AFDC) program, the federally assisted foster care program, or the Medicaid program automatically receive services, and are required to work with the local child support enforcement agency to establish and enforce a child support order unless it is determined not to be in the best interest of the child. Non-AFDC families may apply for the same services available to the AFDC families. Non-AFDC families may, however, be charged an application fee of up to 25 dollars.

Federal financing arrangements for state child support enforcement activities are very generous—a 68 percent reimbursement rate for state administrative costs, 90 percent reimbursement for state ADP system and genetic testing costs, incentive payments to the state of six to ten percent of all child support collections, plus the return to the state of its share of all collections made on behalf of AFDC recipients. In fiscal year 1987, states received $349 million more in collections and Federal financing and incentive payments than they spent in state funds to administer the program. However, despite support collections made through these offices of almost $4 billion, the net loss to the Federal government was the largest in the history of the program, $327 million.

We have no evidence that the current Federal-state financing structure of the program is related to program effectiveness as measured by collections or other important program measures such as rates for paternity or support award establishment. With significant increases each year in Federal expenditures for child support enforcement, and annual increases in the amount of child support collected through the CSE program, the annual aggregate amount of child support collected nationally (as reported on the Current Population Survey) has remained relatively stable over the last decade. Is the Federal government paying for child support activities that would have been paid for by the states and/or families in the absence of the Federal program?

We would also like to know the effect of the CSE program on various aspects of child support enforcement given the current Federal-state financing structure. What effect have public enforcement services had on the enforcement of child support awards? What effect have they had on the size of the payments being made and the frequency of the payments? Does the effectiveness of public support enforcement vary between the AFDC population that is required to work with the local CSE office and the non-AFDC population that voluntarily seeks public support enforcement assistance?

b. Paternity Establishment: The First Step to Receiving Child Support. It is now a widely accepted fact that lacking child support is a contributing factor to the high poverty and welfare dependency rates among households headed by unmarried mothers. Overall, of the 8.8 million women with children who do not have a father living in the home, sixty-one percent have child support awards. Never-married women, however, are substantially less likely to have awards than women who have been married. Only 18 percent of all never-married mothers have child support orders compared to 82 percent of the divorced women.

Paternity establishment is the first crucial step to obtaining child support for children of never-married mothers. Yet, paternity establishment is the area where we know the least. We do not even know for all children born out-of-wedlock how many have paternity established.

Paternity data are generally not available. At the center of the data issue is a very legitimate privacy concern. How does one collect paternity establishment information, especially information about fathers of children born out-of-wedlock, when legal paternity has yet to be established?

Case studies of states or local communities are potential research directions. Baseline data for the number of children born out-of-wedlock to mothers being assisted by the state CSE offices, and the number of them that have paternity established should be available in July, 1989, from the Federal Office of Child Support Enforcement. Do states or particular local jurisdictions differ in measurable ways in their paternity establishment practices so that meaningful comparisons about outcomes can be made? How do CSE paternity establishment procedures vary across jurisdictions with regard to law, process, activities, success, and costs? Do local CSE paternity establishment activities and paternity establishment rates for CSE clients differ for AFDC and non-AFDC cases? Does the paternity establishment rate for CSE clients vary with the local CSE caseload or the size of the CSE staff?

We are also interested in specific CSE techniques or activities that result in higher rates of paternity establishment for some CSE offices. Does the rate of voluntary paternity establishment vary with the time after birth? Does the speed with which a case is acted on affect the success or cost of establishing paternity for the case? Can paternity rates be increased by actively involving local social service workers or nurses in the hospital?

The Family Support Act of 1988 requires beginning in 1991 the disclosure

of both parents' social security numbers (SSN) at the time of the child's birth to assist in establishing paternity and child support orders. Several states already require SSN's. As of April 1989, Alabama, Connecticut, Florida, Georgia, Hawaii, Illinois, Kentucky, Maryland, Michigan, Mississippi, New York excluding New York City, Virginia, and West Virginia required both SSN's at the time of birth. To more smoothly implement the requirements of the Family Support Act we need to know what problems these states have encountered in obtaining the father's SSN in out-of-wedlock births. Have the local CSE agencies found the SSN helpful in establishing paternity or in other enforcement activities?

c. The Relationship Between Guidelines, Awards, and Reviews. Many child support experts have argued that the amount of support awarded women for their children is too low. Congress, partially in response to these claims, required states as part of the 1984 Child Support Enforcement Amendments to develop award guidelines to be considered in determining support obligations. The Family Support Act of 1988 went further to require judges and other officials to use the state guidelines when determining award amounts unless they find that applying the guidelines would be unjust or inappropriate in a particular case.

These are three basic conceptual child support guideline models.* First, the income sharing model is based on the concept that the child should receive the same proportion of parental income he or she would have received if the parents lived together. The specific proportion can vary with the number and ages of the children being ordered support, parental income levels, the definition of income being considered, who is given responsibility for child care and medical expenses, who is given custody, the number of other dependents in each household, and the current spouse's income. Second, the cost sharing model apportions between the parents the estimated dollar cost of providing the child with a minimum standard of living. The division of the burden is usually based on the parents' respective incomes. Third, the income equalization model intends to equalize the standards of living between the separate households. The income of each parent is allocated between the households based on the number of persons in each.

Most guidelines being implemented by the states fall under the broad rubric of income sharing models. Examples of income sharing formulas that have been in use for several years inclue the Washington State Uniform Child Support Guidelines, the Wisconsin Percentage of Income Standard, the Minnesota Child Support Guidelines, and the Illinois Child Support Guidelines. Examples of more recently implemented income sharing guidelines are the Colorado Child Support Guideline and the New Jersey Child Support Guidelines. The Income Shares Model recommended by the National Advisory Panel on Child Support Guidlines has so far been adopted by Colorado, Maine, Michigan (in modified form), Nebraska, New Jersey, and Vermont.

We would like to know if mandatory guidelines, when implemented, increase the size of the awards being established or modified, or merely increase the equity across awards. Preliminary results in Wisconsin indicate that their guidelines have not increased award amounts. This outcome, however, may be the result of Wisconsin having established guidelines at or near the average award level prior to the implementation of the guidelines. Experiences may differ in other states. There may be different outcomes for the AFDC and non-AFDC cases handled by the local CSE office. Likewise, award amounts set using guidelines may vary between cases handled privately and cases serviced through the CSE agency. Of interest, as well, are why some cases have award amounts that significantly deviate (either high or low) from the award guideline amount.

The Family Support Act of 1988 also calls for periodic reviews of support orders already in effect beginning in October 1993. Currently, a support order is reviewed only when one of the parents or the local Child Support Enforcement Office requests it. What events lead to an award review? What are the obstacles to a modification? How do award reviews vary across states and local jurisdictions regarding frequency and procedure? Do the factors that affect the amount of the initial award differ from those that affect an award modification? How does the mandatory use of guidelines affect award reviews? Are there interstate obstacles to establishing an award or modifying an award due to varying jurisdictional laws and practices? Examination of individual cases within and across jurisdictions may be the appropriate approach to addressing these important issues.

d. Child Support Payment: Who are the Fathers Paying Child Support? One of the activities of local child support enforcement offices is to enforce support orders. Yet, in 1985, according to custodial mothers less than half (48 percent) of the 4.4 million women owed child support payments received the full amount. Twenty-six percent of these women received less than they were owed, and 26 percent received no payment at all. The average amount of child support received for all women due payments was $1,640. If the full amount had been paid, the average child support payment would have been $2,500. Of the $10.9 billion in child support due in 1985, $3.7 billion went uncollected.

While we know about child support receipt, we have not been able to isolate non-custodial fathers, especially the fathers of children born to low-income mothers. Until recently, national surveys only asked custodial mothers whether their child support payments were being received regularly and in full. Now we have more surveys asking fathers about their support payments. In the SIPP survey, for example, non-custodial fathers are asked how much they pay in child support, but, unfortunately, not how much they are supposed to pay.

We would like to understand the non-custodial father's ability and/or willingness to pay child support. Generally, non-custodial fathers report paying more in support for their children than custodial mothers report receiving. Perhaps case studies or national surveys that allow the matching of at least a small number of parents' responses (e.g. NLS–72, the National Survey of Children, and the Consumer Expenditure Survey) can provide some information.

2. *Products.* The applicant should present a schedule for delivery of interim progress reports and a final report. For any project which significantly enhances a data base in the course of the work, a well-documented public use file should also be prepared.

3. *Potential users.* Potential users of the research include policy makers at Federal, State, and local levels of government, as well as professionals in social services, demography, economics, sociology, social work, and related fields. Because many of those who will be interested in this research lack

* Much of this discussion is taken from Part II of the "Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report." Part II was prepared by Robert Williams for grant No. 18–P–20003 given to the National Center for State Courts by the Office of Child Support Enforcement, U.S. Department of Health and Human Services, to the National Center for State Courts. A copy of the final report is available from the ASPE Policy Information Center, Room 438–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or by calling Carolyn Solomon at 202–245–6445.

advanced technical training, it is important that the results of projects be presented in a fashion accessible to such an audience. This will involve the submission of a separate, non-technical executive summary.

4. *Types of projects excluded.* In consideration of the intent of this announcement, applications concentrating on narrow programmatic or policy issues, or not directed to concerns of national interest, will not be considered for funding.

In addition, this announcement seeks empirical analyses founded on a sound theoretical bases. Applications that are limited to theoretical development, or involve new demonstrations will not be considered.

5. *Content and organization of the applications.* The application must begin with a cover sheet, followed by the required application forms, and an abstract of the application (of not more than two pages). Failure to include the abstract may result in delays in processing the application. Each application should include a discussion of the relevant literature, a description of the models to be analyzed, the data sources to be used, and the methodologies proposed to test the models. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), *Code of Federal Regulations,* revised October 1, 1987.

2. "Administration of Grants" (45 CFR Part 74), *Code of Federal Regulations,* revised October 1, 1987.

C. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made in September and October 1989; however some may be made subsequent to this date.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. It is expected that projects will be completed within a twelve- to eighteen-month period. Longer projects will not be considered.

D. Statement of Funds Available

1. $200,000 has been allocated for grants as a result of this announcement. $100,000 is to be awarded in Fiscal Year 1989, which ends September 30, 1989, and $100,000 is to be awarded in Fiscal Year 1990, which begins October 1, 1989. Applications may be for any amount, but it is expected that most awards will be for single projects of no more than $75,000, though projects proposing major data collection will not be limited to $75,000.

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources, in their application. When it is judged that successful completion of a proposed project depends on outside funding, this office's funding commitment will be made contingent on complete demonstration of that outside funding.

2. Funds may be obligated fully at the time of award of these grants or incrementally.

3. The government reserves the right to select for funding more than one application in a given priority area. Further, the selection of the priority areas from the entire set for which awards will be made, will be made in accordance with the quality of all proposals received. However, nothing in this application should be construed as committing the Assistant Secretary to make any awards.

E. Application Processing

1. Applications will be screened initially for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the applicant). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. Applicants should clearly indicate on their cover sheet into which of the priority topics listed above their application falls, or if none, indicate "OTHER".

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5 of this section.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the informational requirements of the reviewers. Applications should be limited to 25 doubled-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Usefulness.* The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in section A above with improved bases for making decisions about these issues. The potential usefulness of the proposed project for the advancement of science. (25 points)

b. *Clarity and Understanding.* Understanding and knowledge of prior work in the area. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results. (15 points)

c. *Research Design.* The appropriateness and soundness of methodology (which may include an interdisciplinary approach), including overall research design, statistical techniques, modeling strategies, choice of data, and other proposed procedures. Probability of successful completion of the study. (40 points)

d. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Indication of the ability of key staff to produce publishable quality reports or articles. (20 points)

F. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than July 21, 1989, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than July 21, 1989, as evidenced by a receipt from the commercial carrier.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed in section I of this announcement. Hand-delivered applications will be accepted daily

between 9: 00 am and 4:30 pm, Washington, DC time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on July 24, 1989.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed on the checklist of the application.

I. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Crants Officer at the same address. Neither questions nor requests for application should be submitted after July 7, 1989.

Important—Application for Federal Assistance (Standard Form 424) must be the new form revised 4/88.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

K. Intergovernmental Review of Federal Programs

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

L. Cost Sharing

All applicants responding to this notice are required to share some part of the total cost of their proposed project. The amount to be shared is to be determined by the organization submitting the application. Applications received without some amount of cost sharing will not be considered for award.

Date: May 25, 1989.

[FR Doc. 89–13422 Filed 6–6–89; 8:45 am]
BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement No. 937]

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1989 for training grants in occupational safety and health.

Authority

This program is authorized under section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in Part 86, "Grants for Education Programs in Occupational Safety and Health," of Title 42, Code of Federal Regulations (42 CFR Part 86).

Objectives

The objective of this grant program is to award funds to eligible institutions or agencies to pay part or all of the costs of the combinations of long-term and short-term training activities in occupational safety and health.

Eligible Applicants

Any public or private educational or training agency or institution located in a State, the District of Columbia, or U.S. Territories, is eligible to apply for a grant.

Availability of Funds and Recipient Activities

Funds in the total amount of $10,455,000 will be available in Fiscal Year 1989. Approximately $8,995,000 of the total funds available will be utilized as follows:

1. To award approximately 14 new, renewal and continuation Educational Resource Center (ERC) training grants ranging from approximately $400,000 to $800,000 with the average award being approximately $600,000 (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 1986);

2. To award approximately 25 new, renewal or continuation long-term training grants ranging from approximately $10,000 to $500,000 with the average award being $50,000 to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (for specific activities refer to **Federal Register** Announcement, 52 FR 3172, 1987); and

3. To conduct the peer review and evaluations of all new, competing renewal and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

In addition, $1,100,000 of the total funds available will be awarded to Educational Resource Centers to support research training programs (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty, staff, student support, and other resources to train teachers and researchers in the various occupational safety and health disciplines.

Approximately $360,000 of the total funds available will be awarded to Educational Resource Centers to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 STST.1708–1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERC's in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 for the ERC continuing education program (for specific activities refer to the **Federal Register**, 51 FR 32963, September 17, 1986). Program support is available for faculty, staff, and other resources to provide occupational safety and health training to practicing professionals in State and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Review and Evaluation Criteria

In reviewing long-term training grant applications, consideration will be given to:

1. The need for training in the program area outlined by the application. This

should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any within the geographic area.

2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. The degree of institutional commitment: is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. The competence, experience, training, time commitment to the program and availability of faculty to advise students; faculty/student ratio; and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

In reviewing ERC grant applications, consideration will be given to:

1. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

2. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve *Characteristics of an Educational Resource Center* (Program Announcement 51 FR 32964, September 17, 1986).

4. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Previous record of academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in each discipline and record of outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

Application Submission and Deadline

Application forms for new, competing renewal, or supplemental applications may be obtained from: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305.

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: September 1.

An original and six (6) copies of new, competing continuation and supplemental applications should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15.

An original and two (2) copies of non-competing continuation applications should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305.

Catalog of Federal Domestic Assistance Number

This program is described in the Catalog of Federal Domestic Assistance Program No.13.263, Occupational Safety and Health Training Grants.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842–6796.

Please refer to Announcement Number 937 when requesting information regarding this program.

Technical assistance may be obtained from John Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8241.

Dated: June 1, 1989.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 89–13441 Filed 6–6–89; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 89F–0156]

Alunique S.A.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alunique S.A. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the following additives as components of lubricants used in the manufacture of metallic articles for food-contact use:

(a) *N,N*-di(2-hydroxyethyl)butylamine
(b) Bis(hydrogenated tallow-alkyl) aminoethanol
(c) Isotridecyl alcohol, ethoxylated
(d) Bis(hydrogenated tallow-alkyl)amine
(e) Diethyleneglycol monobutylether

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4145) has been filed by Alunique S.A., 56 Grand Rue, CH 1700 Fribourg, Switzerland, proposing that § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) be amended to provide for the safe use of the following additives as components of lubricants in the manufacture of metallic articles for food-contact use:

(a) *N,N*-di(2-hydroxyethyl)butylamine
(b) Bis(hydrogenated tallow-alkyl) aminoethanol
(c) Isotridecyl alcohol, ethoxylated
(d) Bis(hydrogenated tallow-alkyl)amine
(e) Diethyleneglycol monobutylether

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 30, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–13445 Filed 6–6–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0178]

Sequa Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sequa Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the increased use of ethanedial, polymer with tetrahydro-4-hydroxy-5-methyl-2(1*H*) pyrimidinone, propoxylated as an insolubilizer for starch-based coatings in the production of paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4134) has been filed by Sequa Chemicals, One Sequa Dr., Chester, SC 29706–0070, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the increased use of ethanedial, polymer with tetrahydro-4-hydroxy-5-methyl-2(1*H*) pyrimidinone, propoxylated as an insolubilizer for strach-based coatings in the production of paper and paperboard.

The potential environmental impact of this action is being reviewed. If the agency finds that an environemtal impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 26, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–13414 Filed 6–6–89; 8:45 am]

BILLING CODE 4160–01–M

Food And Drug Administration

[Docket No. 89F–0179]

Uniroyal Chemical Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Uniroyal Chemical Co., Inc. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,4'-bis(α, α'-dimethylbenzyl)diphenylamine as an antioxidant for polypropylene intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and

Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4019) has been filed by Uniroyal Chemical Co., Inc., World Headquarters, Middlebury, CT 06749, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 4,4'-bis(α, α'–dimethylbenzyl)diphenylamine as an antioxidant for polypropylene intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 30, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–13446 Filed 6–6–89; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration

[Docket No. 89M–0170]

Meadox Medicals, Inc.; Premarket Approval of the Microvel® Double Velour Graft With Hemashield®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Meadox Medicals, Inc., Oakland, NJ, for premarket approval under the Medical Device Amendments of 1976, of the Microvel® Double Velour Graft with Hemashield®. Afeter reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 26, 1989, of the approval of the application.

DATE: Petitions for administrative review by July 7, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lisa M. Kennell, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7559.

SUPPLEMENTARY INFORMATION: On February 25, 1988, Meadox Medicals, Inc., Oakland, NJ 07436, submitted to CDRH an application for premarket approval of the Microvel® Double Velour Graft with Hemashield®. The graft is indicated for replacement or repair of arteries affected with either occlusive or aneurysmal disease. The graft is not indicated for use as a coronary artery replacement, arteriovenous access device, or patch material.

On November 28, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 26, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based it approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approval labeling is available for public inspection at CDRH—contact Lisa M. Kennell (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 30, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–13415 Filed 6–6–89; 8:45 am]

BILLING CODE 4160–01–M

National institutes of Health

Meeting of the Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee (BRS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), National Institutes of Health, June 21, 1989, Building 31A, Conference Room 3, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 21, from 9:30 a.m. to adjournment to discuss program policies and options concerning the Biomedical Research Support Grant Program. Attendance by the public will be limited to space available.

Mr. Michale Fluharty, Public Affairs Specialist, DRR, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. John A. Beisler, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, (301) 496–6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalogues of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health).

Dated: June 5, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–13648 Filed 6–6–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975), as amended most recently at 54 FR 11080, March 16, 1989), is amended to reflect the changes indicated below in the titles of the programs of the National Institute of Allergy and Infectious Diseases (NIAID) (HNM). These changes will more clearly reflect the organizations' reporting relationship to the Director, NIAID.

Section HN–B, Organization and Functions is amended by retitling the following programs as indicated:

(1) Under the heading *National Institute of Allergy and Infectious Diseases (HNM):*

Former Title	Revised Title
Intramural Research Program (HNM–2).	Division of Intramural Research (HNM2)
Acquired Immunodeficiency Syndrome Program (HNM–3).	Division of Acquired Immunodeficiency Syndrome (HNM3)
Microbiology and Infectious Diseases Program (HNM–5).	Division of Microbiology and Infectious Diseases (HNM5)
Allergy, Immunology and Transplantation Program (HNM–6).	Division of Allergy, Immunology and Transplantation (HNM6)
Extramural Activities Program (HNM–7).	Division of Extramural Activities (HNM7)

Date: May 26, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89–13487 Filed 6–6–89; 8:45 am]

BILLING CODE 4140–01–M

Health Resources and Services Administration; Statement of Organizations, Function and Delegation of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38418–24, August 31, 1982 as amended most recently at 54 FR 19238–39, May 4, 1989) is amended to reflect the establishment of the Division of Quality Assurance and Liability Management, Bureau of Health Professions, within the Health Resources and Services Administration.

Under HB–10, Organization and Functions, amend the following functional statements within HRSA.

1. Under the *Bureau of Health Professions (HBP1)* add the following after the functional statement for *Division of Disadvantaged Assistance (HBP6):*

Division of Quality Assurance and Liability Management (HBP7). Serves as the focal point within the Public Health Service (PHS) for medical, dental, nursing and other health professions' quality assurance efforts and holds lead responsibility for Departmental activities related to the National Vaccine Injury Compensation Program. Works in coordination with PHS Agencies, the Department and other Federal entities, State licensing boards, and national, State and local professional organizations.

Specifically: (1) Proposes PHS guidelines for (a) credentials assessment, granting of privileges, and monitoring and evaluation programs for physicians, dentists, and other health care professionals, (b) professional review of specified medical events in the health care system, and (c) risk management and utilization reviews; (2) collaborates with the public and private sectors regarding quality assurance and risk management issues; (3) participates with the entities involved with competency assurance activities; (4) encourages evaluation and demonstration projects and research concerning quality assurance, medical liability and malpractice; (5) upon request, provides technical assistance to States undertaking malpractice reform; (6) provides staff to and coordinates the activities of the PHS Interagency Advisory Council on Quality Assurance and Risk Management; (7) provides executive secretariat services for the Advisory Commission on Childhood Vaccines; (8) undertakes other quality assurance and risk management development efforts; (9) administers the National Practitioner Data Bank as authorized under Title IV of the Health Care Quality Improvement Act of 1986 and section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987; (10) evaluates petitions for compensation under the National Vaccine Injury Compensation Program (NVICP) through a medical review and assessment of compensability for all complete claim files; (11) tracks awards for compensation under the NVICP; and (12) proposes revisions to the Vaccine Injury Table.

Date: May 25, 1989.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 89–13488 Filed 6–6–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

Applicant: Priour Brothers Ranch, Ingram, TX, PRT–707102

The applicant requests an amendment to their existing permit to cull excess male capitve-bred Eld's deer (*Cervus eldi*) via sport-hunting for the purpose of continued maintenance of the herd and thereby enhancement of survival of the species. The applicant is already authorized to cull barasingha (*Cervus duvauceli*) and red lechwe (*Kobus leche*) via sport-hunting. Animals are to be hunted by both U.S. and foreign citizens. Export authorization, is therefore, also requested.

Applicant: Priour Brothers Ranch, Ingram, TX, PRT–738109

The applicant requests a permit to export the shoulder and head mount of one male barasingha (*Cervus duvauceli*), culled from applicant's capitve herd, as authorized under PRT–707102. Trophy to be exported to Mr. Arnold Alward, New Brunswick, Canada.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–738103

The applicant requests a permit to import 2 male and 4 female capitve born tigers (*Panthera tigris*) from Japan. These tigers are the progency of applicant's own tigers currently on tour in Japan. The tigers will be imported for

purposes of exhibition and captive breeding. In the future, the applicant will export and reimport these animals for the same purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: May 30, 1989.

Karen S. Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–13527 Filed 6–6–89; 8:45 am]

BILLING CODE 4310–AN–M

Bureau of Indian Affairs

Ranking of Applicants for Planning of New Institutes

ACTION: Notice of ranking.

SUMMARY: This notice is published to inform all Tribal applicants of the ranking for Planning of New Institutions (PONI) requests for construction and/or renovations of detention facilities in Indian country. The notice requesting applications was published in the Federal Register on December 9, 1988 (Vol. 53, No. 237, page 49796).

Thirty-seven (37) applications were received, four of which were not graded since they were postmarked after the established deadline of February 13, 1989.

Two other applications were not graded because they had already completed PONI programs. These two applications will be maintained at the Division of Law Enforcement Services Office until the 1989 PONI programs have been completed. Following that they will be in competitive status with the other applicants for the 1989 construction/renovation selection. Thirty-one applicants were received and evaluated by a five member committee with representation from Bureau of Indian Affairs, Division of Law Enforcement Services, Division of Drug, Alcohol and Substance Abuse, and the Branch of Judicial Services.

The thirty-one applications were scored by each of the five committee members based upon established criteria and point values. The individual criteria scores were then accumulated, totaled and averaged. The results of this evaluation process are as follows:

Ranking and Applicant's Name

1. Sac and Fox Nation of Oklahoma
2. Ute Mountain Ute Tribe
3. Gila River Indian Community
4. Salt River Pima/Maricopa Indian Community
5. Colville Confederated Tribes
6. Confederated Tribes of the Umatilla Indians
7. Eight Northern Pueblos
8. San Carlos Apache Tribe
9. Three Affiliated Tribes of Fort Berthold
10. Mississippi Band of Choctaw Indians
11. Blackfeet Nation
12. Mescalero Apache Tribe
13. Spokane Tribe of Indians
14. Pascua Yaqui Tribe
15. Native Village of Kotzebue
16. Mille Lacs Band of Chippewa Indians
17. Lower Brule Sioux Tribe
18. Fort Mojave Tribe
19. Oglala Sioux Tribe
20. Navajo Nation—Shiprock
21. Shoshone and Arapaho Tribes
22. Colorado River Indian Tribes
23. Devil's Lake Sioux Tribe
24. Navajo Nation—Crownpoint
25. Navajo Nation—Chinle
26. Confederated Salish and Kootenai Tribes
27. Navajo Nation—Fort Defiance
28. Fort Belknap Agency
29. Cocopah Indian Tribe
30. Navajo Nation—Tuba City
31. Reno Sparks Indian Colony

FOR FURTHER INFORMATION CONTACT: Mr. Warren LeBeau, Staff Assistant Detention, Division of Law Enforcement Services, Marana, Arizona, (602) 629–5406 or Mr. Robert Montoya, Facility Management and Construction Center, (505) 766–2846.

W.P. Ragsdale,

Assistant Secretary—Indian Affairs.

[FR Doc. 89–13413 Filed 6–6–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–020–09–4410–08]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on July 19, 1989. The meeting will convene at 9:30 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are; (1) Reorganization of the Council, (2) AD HOC Committee report on unauthorized dumping on public lands, (3) Wildlife programs in Idaho, (4) Broom snakeweed infestation update, (5) Noranda mining proposal update, and (6) Status of the deer feeding program. A field tour will leave the District Office at 1:30 p.m. and return at 4:00 p.m.

This meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will start at 11:30 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed. Individuals wishing to attend the field tour must provide their own transportation.

Minutes of the Council meeting will be maintained in the District Office and will be available for the public inspection during regular business hours.

DATE: July 19, 1989.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, Burley District Manager, (208) 678–5514.

Dated: May 30, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89–13453 Filed 6–6–89; 8:45 am]

BILLING CODE 4310–GG–M

[WY–010–09–4332–04]

Boundary Modification for the Cedar Mountain Wilderness Study Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Boundary Modification for the Cedar Mountain Wilderness Study Area (WY–010–222).

SUMMARY: Notice is hereby given that effective immediately, the boundary of the Cedar Mountain Wilderness Study Area (WY–010–222) has been modified (due to availability of new information) to exclude approximately 10 acres of public lands not meeting the minimum

mandatory wilderness characteristics. The location of the boundary modification is Sixth Principal Meridian, Washakie County, Wyoming T. 45 N., R. 94 W., Sections 15 and 22. A portion of these lands have been irrigated (prior to FLPMA) for cropland and are in agricultural trespass. The revised boundary description narrative would be changed from:

"* * * then east to the center of Section 21; then north to the east bank of the Big Horn River; then northeasterly along the east bank to the south line, NE¼NE¼, Section 21; then east along that line to the east line of Section 21; then north to the NE corner of Section 21; then east and north along the property line between public and private lands in Section 15 to the center of the east line of Section 15; * * *"

to:

"* * * then east to the center of Section 21; then north to the east bank of the Big Horn River; then northeasterly along the east bank to the south line, NE¼NE¼, Section 21, then east along that line to the east line of Section 21; then north along the east line of Section 21 to the Muirhead allotment boundary fence. Then north easterly along the Muirhead allotment boundary fence (which is the lower edge of the native range) to the property line between public and private lands in Lot 10 (SW¼SW¼) of Section 15; then east and north along the property line between public and private lands in Section 15 to the Muirhead allotment boundary fence. Then north easterly along the Nuirhead allotment boundary fence (which is the lower edge of the native range) to the property line between public and private lands in Lot 9 (SE¼NW¼) of Section 15; then east along that line to the center of the east line of Section 15; Sixth Principal Meridian, Washakie County, Wyoming. * * *"

This boundary modification of the Cedar Mountain WSA (WY-010-222) will result in a small change in the WSA's size from 21,570 acres to 21,560 acres. Detailed maps of this boundary change are available in the Washakie Resource Area Office, Worland District, Wyoming.

EFFECTIVE DATE: June 7, 1989. This boundary modification will remain in effect for as long as the Cedar Mountain WSA remains in wilderness study area status.

FOR FURTHER INFORMATION CONTACT: Mark E. Goldbach, District Outdoor Recreation Planner, Worland District Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone 307-347-9871.

Ray Brubaker,

State Director.

[FR Doc. 89-13452 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Falcon Offshore Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5183, Block 236, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on May 25, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-13454 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-299]

Certain Food Treatment Ovens, Component Parts Thereof and Processes Carried Out Therein; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 3, 1989, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Heat and Control, Inc., 225 Shaw Road, S. San Francisco, California 94080. The complaint was supplemented on May 19, and May 23, 1989. The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the use within the United States after importation of certain food treatment ovens, component parts thereof and processes carried out therein, by reason of alleged direct and induced infringement of (1) claims 1 through 7 of U.S. Letters Patent 3,947,241 and (2) claims 1, 3, 4 and 11 through 13 of U.S. Letters Patent 4,167,585; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 1, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of the section 337(1) in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain food treatment ovens or component parts thereof, by reason of alleged direct or induced infringement of claims 1, 2, 3, 4, 5, 6 or 7 of U.S. Letters Patent 3,947,241, or (2) in the use of food treatment ovens within the United States, after importation, to carry out processes, by reason of alleged direct or induced infringement of claims 1, 3, 4, 11, 12 or 13 of U.S. Letters Patent 4,167,585, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Heat and Control, Inc., 225 Shaw Road, S. San Francisco, California 94080.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are, the parties upon which the complaint is to be, served:

Koppens Machinefabriek B.V., Beekakker 11–pb, 5760 AA, Bakel, Netherlands.

Koppens Industries, Inc., 1625 S/T Rock Mountain Boulevard, P.O. Box 1599, Stone Mountain, Georgia 30086.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import, Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401E, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and,

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 1, 1989.

[FR Doc. 89–13489 Filed 6–6–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–293 (Final) and Investigations Nos. 731–TA–412 Through 419 (Final)]

Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany

Determinations

On the bases of the record [1] developed in its countervailing duty investigation, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Israel of industrial belts [3] that have been found by the Department of Commerce to be subsidized by the Government of Israel.

On the basis of the record developed in its antidumping investigations, the Commission has made its determinations with respect to industrial belts, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). In the tabulation of the Commission's determinations which follows, a determination of "affirmative" indicates that the Commission determines that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the following products which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV): [4]

Country	Investigation No.	Product	Determination
Israel	731–TA–412 (Final).	V-belts [1]	Negative. [2]
		Synchronous belts [3].	Negative. [2]

[1] The record is defined in section 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commissioners Eckes and Newquist dissenting.

[3] The products covered by these investigations are industrial belts and components and parts thereof, whether cured or uncured, currently classifiable under Harmonized Tariff Schedule (HTS) subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4019.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under Tariff Schedules of the United States Annotated (TSUSA) items 358.0210, 358.0290, 358.0610, 358.6090, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520).

The merchandise covered by these investigations includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. These investigations exclude conveyor belts and automobile belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

[4] A determination of "negative" indicates that the Commission determines that an industry in the United States is not materially injured, nor threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports of such products.

Country	Investigation No.	Product	Determination
		Other belts [4].	Negative.[2]
Italy	731–TA–413 (Final).	V/belts	Affirmative.[5 6 7]
		Synchronous belts.	Affirmative.[5 6 7]
		Other belts.	Negative.[4]
Japan	731–TA–414 (Final).	V-belts	Affirmative.[5 6 7]
		Synchronous belts.	Affirmative.[5 6 7]
		Other belts.	Affirmative.[5 6 7]
Singapore.	731–TA–415 (Final.	V-belts	Affirmative.[5 6 7]
		Synchronous belts.	Negative.[8]
		Other belts.	Negative.[8]
South Korea.	731–TA–416 (Final).	V-belts	Negative.[8]
		Synchronous belts.	Negative.[8]
		Other belts.	Negative.[8]
Taiwan	731–TA–417 (Final).	V-belts	Negative.[8]
		Synchronous belts.	Negative.[8]
		Other belts.	Negative.[8]
United Kingdom.	731–TA–418 (Final).	V-belts	Negative.[8]
		Synchronous belts.	Negative.[8]
		Other belts.	Negative.[8]
West Germany.	731–TA–419 (Final).	V-belts	Negative.[8]
		Synchronous belts.	Negative.[8]
		Other belts.	Affirmative.[5 6 7]

[1] For purposes of these investigations, V-belts are defined as industrial V-belts and components and parts thereof, whether cured or uncured, for use in power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links, currently classifiable under HTS subheadings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under TSUSA items 358.0210, 358.0290, 657.2520, and 773.3520).

[2] Commissioners Eckes and Newquist dissenting.

[3] For purposes of these investigations, synchronous belts are defined as industrial synchronous belts and components and parts thereof, whether cured or uncured, for use in power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links, currently classifiable under HTS subheadings 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under TSUSA items 358.0610, 358.6090, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520).

[4] For purposes of these investigations, other belts are defined as industrial belts and components and parts thereof, other than V-belts and synchronous belts and components and parts thereof, whether cured or uncured, for use in power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links, currently classifiable under HTS subheadings 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under TSUSA items 358.0610, 358.6090, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520).

[5] Chairman Brunsdale, Vice Chairman Cass, and Commissioner Lodwick dissenting.

[6] Commissioners Eckes and Newquist determine that an industry in the United States is materially injured by reason of the subject imports. Commissioner Rohr determines that an industry in the United States is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that he would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

[7] Commissioners Eckes, Rohr, and Newquist also determine, pursuant to 19 U.S.C. 1673d(b)(4)(A), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

[8] Commissioners Eckes and Newquist dissenting.

Background

Following preliminary determinations by the U.S. Department of Commerce that imports of industrial belts from Israel and South Korea [5] [6] are being subsidized by the Governments of Israel and South Korea and that imports of industrial belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective December 2, 1988, instituted investigations Nos. 701-TA-293 and 295 (Final) and, effective February 1, 1989, instituted investigations Nos. 731-TA-412 through 419 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's final investigations, and of the public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 15, 1989 (54 FR 6970). The hearing was held in Washington, DC, on April 27, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 31, 1989. The views of the Commission are contained in USITC Publication 2194 (May 1989), entitled "Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 701—TA–293 (Final) and 731–TA–412 through 419 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 1, 1989.

[FR Doc. 89–13490 Filed 6–6–89; 8:45 am]

BILLING CODE 7020–02–M

[5] Commerce's preliminary countervailing duty (CVD) determination with respect to Singapore was negative, 53 FR 48677, Dec. 2, 1988.

[6] Commerce's final CVD and LTFV determinations were published in the FEDERAL REGISTER of Apr. 18, 1989. Commerce's final CVD determinations with respect to Singapore and South Korea were negative; therefore, the Commission is only required to make a CVD injury determination with respect to subsidized imports from Israel, inv. No. 701–TA–293 (Final).

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Recordkeeping rate-making organizations
OMB Form No.: 3120–0116
Agency Form No.: NA
Frequency: Recordkeeping
Respondents: Surface Transportation Carriers (when required)
No. of Respondents: 70
Total Burden Hrs.: 140 (average 2 burden hours per rate-making organization)
Brief Description of the need & proposed use: Carriers are required to produce the necessary records when needed

by the Commission in rate-adjustment proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13505 Filed 6-6-89; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50.344]

Portland General Electric Co.; Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

In the Matter of Portland General Electric Company, The City of Eugene, Oregon, Pacific Power and Light Company.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1 issued to Portland General Electric Company, et al., (the licensee), for operation of Trojan Nuclear Plant, located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to amend the Trojan license by a Technical Specification (TS) change that will allow modifications to be made to the Control-Auxiliary-Fuel Building Complex which will result in up to a net three percent increase in lateral shear forces on any story.

The proposed action is in accordance with the licensee's application for amendment dated February 10, 1989.

The Need for the Proposed Action

The proposed amendment would revise TS 5.7.2.2.a to allow modifications to the Control-Auxiliary-Fuel Building Complex (the Complex) which result in up to a net 3 percent increase in lateral shear forces on any story. Trojan Technical Specification 5.7.2 currently provides restrictions on the design provisions of the Complex. One of these restrictions, as stated in TS 5.7.2.2.a, is that no modifications which will result in a net 1 percent increase in lateral shear forces on any story of the Complex shall be performed without prior approval by the Nuclear Regulatory Commission.

In designing modifications to imporve Control Building ventilation, the licensee determined that modifications would require up to a 3 percent increase in lateral shear forces for walls in the Control Building. Therefore, a reevaluation of the structure was performed using the same (STARDYNE) finite element computer code, but assuming a 3 percent increase in lateral shear forces rather than the one percent originally assumed. For the reevaluation, all the weights used in the original STARDYNE code were increased by 3 percent, and the effects of those weights on the shear wall capacity-to-force ratios, intrastructure displacements, and floor response spectra were evaluated. The results of the reevaluation, based on an effective increase by 3 percent of all shear forces, indicate that all of the structural components remain well within their allowable stresses and their load capacities are greater than their load demands.

Environmental Impacts of the Proposed Action

In performing its evaluation, the staff determined that the increase in loading allowed by this amendment does not overstress any structural component. All remain well within allowable stresses so that margins of safety with which the building was designed are not reduced. Since margins of safety designed into the building are not reduced, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1989 (54 FR 19270). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation to Trojan Nuclear Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes the proposed action will have no significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 1st day of June 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13508 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

Program for Resolution of Generic Issues Related to Nuclear Power Plants; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is hereby revoking the 1978 Policy Statement "Program for Resolution of Generic Issues Related to Nuclear Power Plants" (43 FR 1565, January 10, 1978).

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: William Milstead, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, extension 492–3742.

SUPPLEMENTARY INFORMATION: Policy Statements have generally been issued by the Commission to provide the staff, the industry and the public with guidance on new issues, programs, or concerns prior to formally implementing regulations or other actions to address these. Such was the case in 1978 when the Commission issued the Policy Statement "Program for Resolution of Generic Issues Related to Nuclear Power Plants" (43 FR 1565, 1/10/78). Since the issuance of this Policy Statement, the Commission's program to resolve generic issues has undergone many reviews and changes. These changes and the current program are described in the following documents:

RES Office Letter 1, Revision 1, "Procedure for Identification, Prioritization, and Tracking of the Resolution of Generic Issues," March 22, 1989.

RES Office Letter 2, "Procedure for Obtaining Regulatory Impact Analysis Review and Support," November 18, 1988.

RES Office Letter 3, "Revision 2, Procedure and Guidance for the Resolution of Generic Issues," March 27, 1989.

NUREG–0933, "A Prioritization of Generic Safety Issues," revised semiannually.

"Generic Issues Management Control System (GIMCS)," published quarterly.

"Safety Issues Management System (SIMS) Procedures" June 8, 1988.

"US Nuclear Regulatory Commission Annual Report to Congress," published annually.

Each of these documents is available for public inspection and copying at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Accordingly, the 1978 Policy Statement no longer reflects the current Generic Issues Management Program and the Commission has elected to withdraw the 1978 Policy Statement from the public record.

Dated at Rockville, MD this 31st day of May, 1989

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–13407 Filed 6–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–16055 License No. 34–19089–01 EA 85–60]

Advanced Medical Systems, Inc., Geneva, Ohio; Order Imposing Civil Monetary Penalties

I

Advanced Medical Systems, Inc., 121 North Eagle Street, Geneva, Ohio, 44041 ("AMS" or the "licensee"), is the holder of Byproduct Material License No. 34–19089–01 issued by the Nuclear Regulatory Commission ("NRC" or "Commission") pursuant to 10 CFR Part 30. The license authorizes possession and use of 150,000 curies of cobalt–60 as solid metal, 150,000 curies of cobalt–60 sealed sources, and 40,000 curies of cesium–137. The license further authorizes the installing, servicing, maintaining, and dismantling of radiography and teletherapy units. The license, originally issued on November 2, 1979, was renewed on June 25, 1986, with an expiration date of October 31, 1986. The license is currently under timely renewal as specified in 10 CFR 2.109.

II

An NRC safety inspection of AMS' activities under the license was conducted on February 21 and 22, 1985. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated June 28, 1985. The Notice states the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. Two responses to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee dated July 31, 1985. In its responses, the licensee denied all violations in the Notice and requested that the proposed civil penalties be remitted. As a result of apparently erroneous information contained in the licensee's response, the NRC Region III Office of Investigations (OI) conducted an investigation during the period August 16, 1985 through June 24, 1986. The investigation findings supported all violations set forth in the June 28, 1985 Notice. On May 24, 1988, the licensee amended its July 31, 1985 response to the Notice striking its response to Violation A and admitting that violation occurred.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for remission or mitigation contained therein and the results of the OI investigation, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operational Support has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Six Thousand Two Hundred Fifty Dollars ($6,250) within thirty (30) days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of

Civil Penalties referenced in Section II above; and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 30th day of May 1989.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support.

Appendix—Evaluations and Conclusions

On June 28, 1985, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection conducted on February 21 and 22, 1985. The licensee responded to the Notice in two letters dated July 31, 1985. In its response letters, the licensee denied the four violations that were identified in the Notice and protested the proposed civil penalties. In a letter dated May 24, 1988, the licensee amended its July 31, 1985 response to the Notice striking its response to Violation A and admitting that violation occurred. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. *Restatement of Violations, Licensee Response, and NRC Evaluation*

A. Restatement of Violation A

10 CFR 20.101(a) limits the whole body dose of an individual in a restricted area to one and one quarter rems per calendar quarter, except as provided by 10 CFR 20.101(b). Paragraph (b) allows a whole body dose of three rems per calendar quarter, provided certain specified conditions are met.

Contrary to this requirement, an individual working in a restricted area received a whole body dose of 2.9 rems in the fourth calendar quarter of 1984 and did not meet the conditions specified in 10 CFR 20.101(b).

Licensee's Response

In a letter dated May 24, 1988 the licensee admitted that the violation occurred.

B. Restatement of Violation B

10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with all sections of 10 CFR Part 20. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, adequate surveys were not made to evaluate the radiation hazard incident to the use of radioactive material to assure compliance with 10 CFR 20.201(a). Specifically, the only surveys made by the licensee on November 6 and November 21, 1984 were surveys at the hot cell door showing radiation levels of 17.5 R/hr and 18 R/hr, respectively. These surveys which were used to calculate personnel stay time in the hot cell did not accurately reflect radiation levels inside the hot cell where individuals were required to work. A survey made by the licensee on April 25, 1985 showed radiation levels of up to 81 R/hr inside the hot cell. This was approximately four times the levels that were used by the licensee to calculate cell stay times. As a result, actual radiation doses to two individuals who were required to enter the hot cell on November 21, 1984 were greater than anticipated and one of these individuals exceeded the whole body dose limit specified in 10 CFR 20.101(a). In addition, neither the Radiation Safety Officer nor his designee adequately supervised the working times of the individuals in the hot cell to ensure that dosimeters were frequently checked for confirmation of the anticipated dose rates.

Licensee's Response

The licensee denied the violation in its letter dated July 31, 1985, and stated that a complete cell survey had been made with a remote probe prior to the November 6 and 21, 1984 hot cell entries. The licensee also stated that prior to any survey at the door a complete survey by a remote probe is always performed.

The licensee further stated it is not valid to assume that the readings obtained during the April 25, 1985 survey are similar to the radiation levels that existed in 1984, because work had been performed before the April 1985 survey that would have increased the hot cell radiation levels.

NRC Evaluation

During the Enforcement Conference that was held in the Region III office on March 13, 1985, the licensee's Radiation Safety Officer stated that the remote probe was erratic, was not calibrated, and was not used for cell radiation level surveys, and that use of the remote probe was limited to locating cobalt-60 pellets in the hot cell during decontamination procedures.

According to the licensee's survey records, the surveys that were made prior to cell entries on November 6 and 21, 1984 were made only at the entrance door to the cell and an evaluation of the radiation hazards within the cell incident to the presence of radioactive materials was not made.

The NRC staff did not conclude that the radiation levels found during the licensee's April 25, 1985 survey were similar to the radiation levels that existed in the hot cell on November 6 and 21, 1984. Rather, the April 25, 1985 survey indicated that, in April 1985, the radiation levels inside the hot cell were greater than four times higher than the radiation levels at the entrance door.

Since the radiation levels at the entrance door were the only ones used in November 1984 to determine stay time of individuals in the hot cell, and since the individuals' actual radiation exposure substantially exceeded that anticipated by the licensee using the entrance door survey results, the entrance door surveys did not provide an adequate evaluation of the radiation hazards incident to the presence of radioactive materials within the hot cell.

C. Restatement of Violation C

License Condition No. 16 requires that licensed material by possessed and used in accordance with statements, representations, and procedures contained in "Radiation Safety Procedures Manual, ISP–1" dated July 1983.

Section 7.2.c, "Personnel Monitoring," of ISP–1 states, "Work in high dose areas will be preceded by a survey with appropriate monitoring equipment and an estimated total accumulated exposure determined . . . . The pencil type dosimeters will be read at intervals consistent with the anticipated dose rate to determine that the actual exposure is not greater than the anticipated exposure."

Contrary to this requirement, dosimeters were not read at intervals consistent with the anticipated dose rate to determine that the actual exposure was not greater than the anticipated exposure. Specifically, on November 21, 1984, two individuals worked in the licensee's hot cell, an area where high radiation levels existed. Individual A remained in the hot cell for 3.65 minutes and Individual B remained for 3.8 minutes without reading their dosimeters. When the individuals read their dosimeters after exiting the hot cell, both 1R dosimeters were off-scale. The licensee estimated the doses by reading the 5R dosimeter that Individual A was wearing. After reading the dosimeter, the licensee assigned a 1625 millirem dose to Individual A and a 1600 millirem dose to Individual B. This is more than twice the 750 millirem dose that was anticipated.

Licensee's Response

The licensee denied the violation in its letter dated July 31, 1985. In its response, the licensee stated that the Notice of Violation gave the impression that individuals entered the hot cell and emerged approximately 3.5 minutes later.

The licensee stated that this was not the case and that four entries were made by each individual on November 21, 1984. The licensee further stated that between visits, dosimeters were checked to ascertain actual exposure and no re-entry would occur if a radiation exposure limit had been reached. The licensee further stated that all three involved individuals verified that the dosimeters were read prior to cell entry and at the completion of tasks.

NRC Evaluation

The focus of this violation is not the number of entries, but the licensee's failure to read dosimeters at intervals consistent with the anticipated radiological hazard to determine that the actual exposure was not greater than the anticipated exposure.

Sworn, transcribed interviews with the personnel involved have established that Individuals A and B made multiple entries from the decontamination room into the hot cell on the afternoon of November 21, 1984. The transcribed testimony of Individuals A and B, taken under oath on September 3 and 4, 1985, indicates that their dosimeters were not checked between those entries. Based on the evidence, the NRC staff concludes that, on the afternoon of November 21, 1984, the dosimeters worn by Individuals A and B were read only upon completion of all work in the hot cell. By this time, the dosimeters worn by Individual B had gone off-scale due to the high accumulated radiation dose and could therefore not be used to determine

Individual B's radiation exposure. Also by this time, the exposure limit for Individual A, as specified in 10 CFR 20.201(a), had been exceeded.

D. Restatement of Violation D

License Condition No. 16 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application received July 16, 1979, and in certain referenced letters.

Schedule E of the referenced application states that dosimeters will be calibrated at intervals of 180 days or less or before first use if longer than 180 days since last calibration.

Contrary to this requirement, dosimeters had not, in all cases, been calibrated at intervals of 180 days Specifically, dosimeters used by individuals who entered the hot cell on November 6 and 21, 1984 had not been calibrated between January 1983 and January 1985.

Licensee's Response

The licensee denied the violation in its July 31, 1985 response. The licensee stated that the procedure for calibration submitted in 1979 was found to be unworkable in that it did not produce repeatable results and that the technique adopted as an alternative was the comparison of dosimeter readings with film badge reports on a monthly basis. The licensee further stated that this technique was used to determine that the dosimeters utilized during the November 1984 cell entries were within tolerances.

NRC Evaluation

The licensee is required, in accordance with the provisions of License Condition No. 16, to calibrate dosimeters by using a calibrated radiation source. Intercomparison between dosimeter and film badge readings is not an approved calibration technique. If the licensee concludes that the method required by License Condition No. 16 is unworkable, an alternative method may not be substituted without first submitting the alternative method to NRC for evaluation and without first having the license amended to authorize the alternative procedure. Using a radiation source is the method used throughout the industry and is the only calibration method currently approved by the NRC.

II. NRC Conclusion

The NRC staff has concluded that all violations did occur as herein stated and therefore the $6,250 proposed civil penalty should be imposed.

[FR Doc. 89-13510 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas and Electric Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 37 to Facility Operating License No. DPR-18 issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to reflect testing requirements for snubbers that ensure structural integrity of systems following a seismic or other event initiating dynamic loads.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on August 10, 1988 (53FR30123). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated July 24, 1987 as supplemented on May 4, 1988, June 21, 1988, September 16, 1988, February 16, 1989 and March 14, 1989, (2) Amendment No. to License No. DPR-18, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, Lower-Level, 2120 L Street, NW., Washington, D.C. and at the local public document room located in the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 30th day of May, 1989.

For the Nuclear Regulatory Commission.

Al Johnson,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 89-13509 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Policy Letter on Consultants and Conflicts of Interest; Invitation for Public Comment

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: The Office of Management and Budget (OMB) is requesting comments on a proposed new Office of Federal Procurement Policy (OFPP) policy letter dealing with consultants and conflicts of interest.

SUMMARY: This Office of Federal Procurement Policy (OFPP) Policy Letter establishes (a) government-wide policy relating to conflict of interest standards for persons who provide consulting services both to the United States Government and to persons who contract with the United States, and (b) procedures to promote compliance with those standards.

The policy is being published pursuant to the direction of the United States Congress as expressed in section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. No. 100-463, 102 Stat. 2270-47 (1988).

After OFPP issues this policy letter, § 8141 directs that government-wide regulations must be promulgated that implement the provisions of the section in the light of the guidance in this policy letter. These regulations are required by § 8141 to be promulgated no later than 180 days after the date of publication of the final version of the letter.

Before the issuance of the regulations required by section 8141, the President of the United States is empowered to make a determination that the regulations "would have a significantly adverse effect on the accomplishment of the mission of the Department of Defense or other federal government agencies * * *." Submission of a report containing an adverse effect determination to Congress will automatically nullify and void the regulations.

Section 8141 also directs the Comptroller General to report to Congress no later than one year from the

date of enactment his assessment of the effectiveness of the regulations prescribed pursuant to the section.

DATE: Comments must be received on or before August 7, 1989.

ADDRESS: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503. Telephone (202) 395–6810.

Allan V. Burman,

Acting Administrator and Deputy Administrator.

Dated: June 1, 1989.

Policy Letter XX–X

To the Heads of Executive Departments and Establishments

Subject: Conflict of Interest Policies Applicable to Consultants.

1. *Purpose.* The purpose of this Policy Letter is (a) to establish policy relating to conflict of interest standards for persons who provide consulting services and (b) to provide procedures to promote compliance with those standards.

2. *Authority.* This directive is issued pursuant to section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100–463, 102 Stat. 2270–47 (1988) (hereinafter "the Act").

3. *Background.* This Policy Letter is intended to carry out the Congressional mandate in section 8141 of the Act. That section provides, in part, as follows:

Section 8141. (a) Not later than 90 days after the date of enactment of this Act, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter government-wide regulations shall be issued under the Office of Federal Procurement Policy Act which set forth:

(1) Conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) Procedures, including such registration, certification, and enforcement requirements as may be appropriate, to promote compliance with such standards.

(b) The regulations required by subsection (a) shall apply to the following types of consulting services:

(1) Advisory and assistance services provided to the government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

(2) Services related to support of the preparation or submission of bids and proposals for federal contracts to the extent that inclusion of such services in such regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the intersts of the United States; and

(3) Such other services related to federal contracts as may be specified in the regulations prescribed under subsection (a) to the extent necessary to indentify and evaluate the potential for conflicts of interest that could be prejudical to the interests of the United States.

4. *Definitions.* (a) "Act" means the Department of Defense Appropriations Act, 1989, Pub. L. 100–463, 102 Stat. 2270–47 (1988).

(b) "Advisory and assistance services" means advisory and assistance services as defind in OMB Circular No. A–120, "Guidelines for the Use of Advisory and Assistance Services," and any amendments thereto, excepting engineering, technical, legal and accounting services. Only those compensated services provided pursuant to contracts are covered by the policy document.

(1) Such services include—

(i) Services provided by individual experts and consultants;

(ii) Management and professional support services; and,

(iii) the conduct and preparation of studies, analyses, and evaluations.

(c) "Agency" means any executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned government corporation within the meaning of 31 U.S.C. 9101.

(d) "Conflict of interest" means a) that condition or circumstance wherein a person is unable or is potentially unable to render impartial, technically sound, or objective assistance or advice to the government in light of other activities or relationships with other persons, or b) wherein a person is given an unfair competitive advantage. Types of conflicts include, but are not limited to, the following:

(1) Evaluating another contractor's or potential contractor's products or services, where the evaluator is or has been substantially involved in the development of marketing of these products or services;

(2) Serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after preparing or assisting substantially in the preparation of specifications to be used in the same acquisition; and

(3) Serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after having acess to source selection or proprietary information not available to other persons competing for the contract.

(e) "Marketing Consultant" means any independent contractor who furnishes advice, information, direction, or assistance to any other contractor in support of the preparation or submission of a bid or proposal for a government contract by such contractor, except where such support relates directly to the technical requirements of the bid or proposal.

5. *Exemptions.* The following kinds of services may be exempted from the application of Executive Branch policies and regulations issued under the Act:

(i) Services rendered in connection with intelligence activites as defined in § 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs; and,

(ii) Services as to which the head of an agency, or his designee, grants a waiver on the basis of the public interest.

6. *Policy.* The policy of the Federal Government respecting conflicts of interest respecting marketing consultants and those providing advisory and assistance services is as follows:

(a) Responsibility for indentifying and preventing potential conflicts of interest in government contracts is shared among the government contracting officer, the requester of the service and other government officials with access to applicable information. The responsibility for deciding whether to procure the service rests with the government contracting officer.

(b) Prior to contract award, contracting officers shall take appropriate steps to indentify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States with regard to persons who provide advisory and assistance services to the government, and to take steps to avoid or mitigate such conflicts; similar actions will be taken to evaluate any unfair competitive advantage that marketing consultants might enjoy.

(c) Federal contracting officers shall require, for types of contract defined in this directive, that the apparent successful offeror provide certified information describing the nature and extent of any potential conflicts of

interest that may exist with respect to the proposed award. Marketing consultants shall also be required to certify that they have no unfair competitive advantage.

(d) Federal procurement activities shall encourage contractors to consider carefully the potential for conflicts of interest in all of their activities associated with federal procurement, and to establish internal standards of conduct and codes of ethics that address such conflicts; also, federal contracting officials shall be sensitive to the appearance of conflicts of interest in any contracting actions; and

(e) Finally, federal procurement regulations that implement this policy and address conflicts of interest shall take into account the need to (1) encourage participation of highly qualified persons and firms in federal procurement programs; (2) enhance and safeguard the Nation's industrial base; (3) increase competition in the award of government contracts; and (4) improve the overall effectiveness and efficiency of the government's procurement programs.

7. *Requirements.* Agency policies and regulations must define responsibilities of the persons described below as follows:

(a) *Defense Acquisition Regulatory Council and Civil Agency Acquisition Council.*

(1) *Promulgation of Regulations.* The Councils shall promulgate the government-wide regulations specified in § 8141 of the Act within 180 days of the effective date of this Policy Letter. Such regulations shall conform to the policies established herein and shall provide additional examples of conflict of interest situations.

(2) *Identification of Standards.* The Councils will identify characteristics of acceptable standards of conduct for use by contracting officers in assessing the adequacy of contractor codes or standards.

(3) *Regulatory Procedures.* The regulations established by the Councils shall reflect the procedural guidance below:

(i) *Prime contractors.* (A) A contractor who employs, retains, or engages one or more marketing consultants with respect to a federal acquisition must submit to the contracting officer, with respect to each marketing consultant, the certificates describerd below, if

(a) The marketing consultant provides services to the contractor that are related to the preparation or submission of bids or proposals for the contract in question; and,

(b) The contractor is notified that it is the apparent successful offeror.

(B) *Certification Process*—(a) *Certificate required.* No certificates are required for government contracts under $200,000. With respect to contracts equal to or greater than $200,000, the contractor must file the certificate described in (b), below, with respect to each marketing consultant, or provide a statement to the contracting officer giving the reasons why no such certification can be made.

(b) *Contents of certificate.* The certificate to be submitted must contain the following:

(1) The name of the agency and the number of the solicitation in question,

(2) The name, address, business telephone number, and federal taxpayer identification numbers of the marketing consultant;

(3) The name, address, and business phone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultant's involvement in the contract;

(4) A description of the nature of the services rendered by or to be rendered by each marketing consultant;

(5) Based on information provided to the contractor by the marketing consultant, if any marketing consultant is rendering or, in the 12 months preceding the date of the certificate, has rendered services respecting the same or substantially similar subject matter of the instant solicitation to the government or any other client (including any foreign government or person), the name, address, and business phone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s);

(6) A statement that the person who signs the certificate for the prime contractor has informed the marketing consultant of the existence of this Policy Letter and associated regulations. In addition, the prime contractor will forward to the contracting officer a certificate addressed to the government and signed by the marketing consultant that (a) such consultant has been told of the existence of the regulations implementing this policy letter and (b) is satisfied that to the best of his or her knowledge or belief the marketing consultant enjoys no unfair competitive advantage with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that does or may exist, to the best of his or her knowledge or belief, has been communicated to the prime contractor; and

(7) The signature, name, title, employer's name, address, and business telephone number of the persons who signed the certificates or both the prime contractor and the marketing consultant.

(c) *Filing.* These statements and certificates must be filed by agency officials in the contract file.

(d) *Special Certification Provisions.* For solicitations for contracts for $200,000 or more, but less than $1,000,000, if the prime contractor has established internal standards of conduct possessing the characteristics developed by the Councils pursuant to ¶ 7(a)(2), the certificate need only contain a statement to this effect and the information described in (1), (2), (6), and (7) in clause (b) immediately preceding. The marketing consultant must still submit the certificate described in (6).

(ii) *Those providing advisory and assistance services directly to the government.* Those providing advisory and assistance services must submit to the contracting officer the certificate or certificates described below if the contractor is notified that it is the apparent successful offeror.

(A) *Certification Process.*—(a) *Certificate required.* No certificates are required for relevant contracts under $25,000. With respect to every contract equal to or greater than $25,000, the certificate described in (b), below, must be filed or a statement provided to the contracting officer giving the reasons that no such certification can be made.

(b) *Contents of the certificate.* The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question;

(2) the name, address, business telephone number, and federal taxpayer identification number of the apparent successful offeror,

(3) A description of the nature of the services rendered by or to be rendered on the instant contract;

(4) If, in the 12 months preceding the date of the certification, services are being or were rendered to the government or any other client (including a foreign government or person) on the same or substantially similar subject matter to that described in (3), above, the name, address, business telephone number of the client of client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client. The agency for which and contract number under which

the services were rendered must also be included, if applicable;

(5) A statement that the person who signs the certificate has made inquiry and (a) is satisfied that to the best of his or her knowledge or belief no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services provided in connection with the instant contract, or (b) that any potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question, to the best of his or her knowledge or belief, has been communicated to the contracting officer or his or her representative; and

(6) The signature, name, employer's name, address, and business telephone number of the person who signed the certificate.

(c) *Filing.* The statement and certificate must be filed by agency officials in the contract file.

(d) *Special Filing Provisions.* For contracts of $25,000 or more but less than $500,000, if the contractor has established internal standards of conduct possessing the characteristics developed by the Councils pursuant to ¶ 7(a)(2), the certificate required need only contain a statement to this effect and the information described in (1), (2), (5), and (6), in clause (b), immediately preceding.

(iii) *Executive Branch Agencies.*—(A) *Maintenance of data files.* Each agency must maintain the certificates described by this Policy Letter in the contract file. Agencies may extract and categorize such information from these files and consolidate them in a central registry, as appropriate, subject only to the requirement to safeguard information as requested by the submitter of the certificate as confidential, sensitive, privileged,. proprietary, or otherwise not releasable, or based on independent agency determinations pursuant to the Freedom of Information Act, or other activity, not to release the information.

(B) *Availability of data.* Certifications of any kind must be made available to department or agency contracting officers or their designees, inspectors general, or government audit officials.

(C) *Retention of data.* The information required by this policy Letter must be retained by the agencies in the contract file in accordance with established procedures.

(D) *Nondisclosure of information.* Executive Branch agencies and departments must protect, to the fullest extent permitted by law, all sensitive business and other information submitted by consultants or contractors pursuant to any policy devised or regulation promulgated pursuant to the Act. Contractors and consultants must take care to identify what trade secrets, proprietary information, and other commercially valuable information are confidential, sensitive, privileged, proprietary, or otherwise not releasable to afford the greatest protection possible under the Freedom of Information Act. Opportunity to so mark such information shall be afforded to submitter of the information at any time.

(E) *Preawood conflict of interest analysis; special contract provisions.* Using (a) information from any certificates or statements previously submitted or submitted with the bid or offer in question and (b) any other substantive information available to them, agency contracting (and program officials if the contracting officer in his or her discretion so requests) must, before an award of a contract is made, determine whether a conflict of interest exists with regard to those providing advisory and assistance services to the government or an unfair competitive advantage exists with respect to any marketing consultant in connection with a particular contract action. After conferring with the prime contractor and the marketing consultant, or the contractor rendering advisory and assistance services, the contracting officer shall deny the award to the apparent successful offeror if a conflict of interest or unfair competitive advantages exists, unless the conflict can be avoided by appropriate contract language, or unless the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding such conflict or unfair competitive advantage and so documents the file.

(F) *Inspection of contractor standards of conduct.* Any standards of conduct implemented pursuant to section 7 above must be in writing and contracting officers may require contractors to submit copies of standards of conduct as needed. If such codes and standards do not satisfactorily address the regulations implementing this Policy Letter, contracting officers may require contractors to provide information otherwise exempted above.

(G) *Other information.* This Policy Letter does not prohibit contracting officers from requesting any other information relevent to the goals of this Policy Letter, or for any other lawful purpose, if and as needed. In addition, in special cases, and if approved by the head of the contracting activity, the contracting officer may request that the certificates described in section 7 be made with respect to a period as long as, but no longer than 36 months preceding the date of the certificate.

(b) *Office of Federal Procurement Policy.* All government-wide regulations to be issued pursuant to § 8141 of the Act will be provided to the Federal Acquisition Regulatory Council for review not less than thirty days prior to publication in the **Federal Register** for public comment, and these regulations shall be reviewed by the Administrator of the Office of Federal Procurement Policy pursuant to the authority of section 6 of the OFPP Act, codified at 41 U.S.C. section 405.

8. *Remedies.* Persons required to certify in accordance with this Policy Letter and associated regulations but who wilfully fail to do so may be determined to be non-responsible and therefore not be awarded a contract.

Those who wilfully misrepresent any fact in any certificate required to be submitted after such warnings and conferences as may be prescribed by the regulations, if any, may be subject to suspension and debarment, as well as to penalties associated with false certifications or such other provisions provided for by regulation.

9. *Information contract.* For information regarding this Policy Letter please contact Richard A. Ong., Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503. Telephone (202) 395-6810.

10. *Sunset review date.* This Policy Letter will be reviewed three years from the state of issuance and every three years thereafter to assure accurancy and relevancy.

[FR Doc. 89-13570 Filed 6-6-89; 8:45 am]
BILLING CODE 3110-01-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Report of Trade Liberalization Priorities Pursuant to Section 310 of the Trade Act of 1974, as Amended

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted the report published herein to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, identifying trade liberalization priorities pursuant to section 310 of the Trade Act of 1974, as amended.

DATE: The report was submitted on May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW., Wshington, DC 20506, (202) 395–3432.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows:.

IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES PURSUANT TO SECTION 310 OF THE TRADE ACT OF 1974, AS AMENDED

I. Introduction Trade Liberalization Priorities

This report is submitted pursuant to section 310 of the Trade Act of 1974, as amended (19 USC 2420), popularly known as "Super 301." Section 310 requres the United State Trade Representative to identify trade liberalization priorities, including priority practices and countries that will be a focus or negotiations in 1989 and 1990 to broaden access for U.S. exports to foreign markets.

The first step in the Super 301 process was preparation of the National Trade Estimate (NTE) Report, which contains an inventory of practices affecting goods, services, investment, and intellectual property protection in 34 nations and two regional trading blocs. The NTE Report was submitted to the President and appropriate committees of the Senate and House of Representatives on April 28, 1989.

Using the NTE as a basis, and taking into account comments from the private sector, the USTR is required to identify foreign trade practices the elimination of which is likely to significantly increase U.S. exports. The statute also directs the USTR to identify priority countries, taking into account the number and pervasiveness of significant barriers to U.S. exports. By June 15 the USTR must initiate investigations under section 302 of the Trade Act of 1974, as amended, of priority practices of priority countries.

In implementing section 310, the Administration will aim to eliminate significant trade barriers and trade-distorting practices through multilateral and bilateral negotiations—not simply to increase U.S. exports, but to liberalize trade for the benefit of all nations.

This approach is consistent with the Administration's overall trade policy, which is to open markets not close them; to create an ever-expanding international trading system based upon clear and enforceable rules.

Accordingly, the highest trade liberalization priority identified by the USTR is to conclude successfully the Uruguay Round of multilateral trade negotiations by December 1990. In those negotiations the United States seeks to achieve multilateral agricultural reform, to expand the scope of international rules to include trade in services, protection of intellectual property rights and trade-related investment measures, and to reduce or eliminate a wide variety of tariff and non-tariff barriers to trade.

Section 301 is a tool the Administration will use constructively to promote its trade policy objective. Its purpose is not to retaliate, but to provide negotiating leverage to remove trade barriers. Therefore, the Administration will initiate section 302 investigations selectively, where the leverage provided by the credible threat of retaliation will encourage its trading partners to honor existing agreements, and to abide by, or expand, GATT rules.

Accordingly, the USTR has identified the following priority practices and countries, which will be the subject of investigation and negotiation in this year's Super 301 process:

- *Quantitative import restrictions*—including import bans, quotas, and restrictive licensing regimes that inhibit imports of manufactured and agricultural products. Such practices in Brazil will be given priority attention.
- *Exclusionary government procurement*—where governments have adopted policies and practices that afford protection to domestic products and exclude foreign suppliers. Such practices affecting Japan's procurement of satellites and supercomputers will be given priority attention.
- *Technical barriers to trade*—where governments have adopted trade-restrictive technical standards and regulations that create unnecessary obstacles to international trade. Such standards affecting imports of forest products in Japan will be given priority attention.
- *Trade-related investment measures*—including requirements governments place on foreign investors to export a portion of what they produce, or to use locally-produced inputs, and other trade-distorting reqirements. Such practices in India will be given priority attention.
- *Barriers to trade in services*—including government measures which prevent U.S. services industries from competing effectively in foreign markets. India's market, competely closed to foreign insurance companies, will be given priority attention.

Identification of these priority practices was based upon a number of considerations, including:

—the potential to increase U.S. exports if these practices are eliminated;
—the precedential effect of seeking and obtaining their elimination;
—the likelihood that 302 investigations would advance U.S. efforts to eliminate these practices; and
—the compatibility with U.S. objectives in the Uruguay Round.

Identificaiton of priority countries took into account the number and pervasiveness of significant barriers to U.S. exports.

As was noted in the NTE Report, it is extremely difficult to estimate how much U.S. exports would increase if a non-tariff barrier to trade were removed. Estimating the trade impact of such barriers requires detailed information on price differences between countries and relevant supply and demand conditions, which is not readily available. Such information normally is gathered in the course of an investigation under section 302, in order to assess the burden or restriction on U.S. commerce caused by a particular foreign barrier.

The five categories of trade barriers identified above—and the individual countries' practices selected as representative of each category—do not encompass all of the major trade distortions facing American exporters, but they are among the most important.

A sixth category, intellectual property protection, is being addressed separately but simultaneously through the "Special 301" process under section 182 of the Trade Act of 1974, as amended (19 USC 2242). All six categories include practices the elimination of which is likely to have significant potential to increase U.S. exports, either directly or through establishing a beneficial precedent.

Many other trade barriers, including those listed in the NTE Report, are and will continue to be addressed in on-going negotiations with our trading partners. Principal among them are trade-distorting subsidies and agricultural policies. These practices are no less important than those identified as priority practices under the statute. However, the Administration has determined that their elimination can be better pursued at this time outside of section 301, especially through multilateral negotiations in the Uruguay Round.

The Administration also will continue to pursue trade barriers already the subject of investigations, negotiations, and action under section 301 including, for example, Japan's practices affecting construction services and semiconductors.

Industries are free at any time to file petitions requesting 302 investigations; historically, most such petitions have been accepted by the USTR. Thus, additional investigations are likely to be initiated—either as the result of industries' petitions, or self-initiated by the USTR—during the coming year.

Finally, in implementing Section 310 next year, USTR will reevaluate the status of certain practices not identified this year, in light of progress made in bilateral and multilateral negotiations.

II. Priorities Under the Statute: Section 302 Investigations

The Administration's approach to Super 301 consists of a number of components that are integral parts of a comprehensive package. Super 301 is not simply an exercise in identifying specific practices or countries; rather it is one element of a broader strategy aimed at economic growth through trade expansion. The Super 301 process supports this strategy by concentrating U.S. efforts this year on the elimination of practices that, in addition to being serious barriers in themselves, are indicative of broader areas of concern. This approach enables the United States to advance general trade policy objectives through concrete, focused initiatives.

In accordance with the statute, the USTR will initiate by June 15 investigations under section 302 of the Trade Act on the priority practices of priority countries (Japan, Brazil, and India) identified below under Section 301. These investigations will include fact-finding, consultations with U.S. industry representatives, consultations with U.S. trading partners, and, where appropriate, reference to GATT dispute settlement panels.

In consultations with these trading partners, the United States will seek agreements to eliminate these priority practices within three years. If the investigatory and consultative period (12 to 18 months, depending on the nature of the investigation) does not produce favorable results, the USTR will determine whether a practice is actionable under section 301 and, if so, what action (if any) should be taken.

Initiation of an investigation does not prejudge a decision whether a practice is "unfair" or whether section 301 action would be effective in addressing it. The following specific practices will be investigated, and addressed in parallel with broader negotiations aimed at the generic problems of which these practices are emblematic:

A. Quantitative Import Restricts, Import Bans and Restrictive Licensing

An important U.S. priority is the eliminatioin of GATT-inconsistent quotas and licensing restrictions on imports. Such measures cause particular concern with respect to U.S. agricultural exports.

While quotas and restrictive licensing are becoming globally less pervasive, they continue to impede U.S. exports to a number of developing countries that claim their restrictions are justified under the balance-of-payments provisions of GATT Article XVIII:B. In some cases governments have imposed import bans which impair regular channels of trade and which are not progressively relaxed, as required by GATT rules. Moreover, some countries restrict imports through licensing products of particular industries, rather than imposing general balance-of-payments measures, contrary to a 1979 GATT Declaration on Trade Measures Taken for Balance-of-Payments Purposes.

In Uruguay Round negotiations the United States is seeking to strengthen and clarify the requirements of Article XVIII, to ensure that they are used as a temporary derogation from GATT obligations, rather than an open-ended mechanism to protect particular industries with measures that would otherwise be GATT-inconsistent. U.S. objectives include explicit requirements that measures taken for balance-of-payments reasons be temporary, transparent, and uniformly applied to all products, and that tariff measures be preferred over quantitative restrictions.

To support its Uruguay Round efforts, the United States will use all available GATT mechanisms to challenge balance-of-payments import restrictions that the United States believes run counter to GATT obligations.

The following import bans and other import restrictions are identified as a prirority practice under section 310:

Brazil: Import Bans and Other Import Licensing Restrictions

Brazil maintains an import prohibition list which covers approximately 1000 items, barring U.S. exports of agricultural items and manufactured goods, including meat, dairy products, plastics, chemicals, textiles, leather products, electronic items, motor vehicles, and furniture. Brazil also uses its licensing regime to implement company and sectoral import quotas, which impede many important U.S. export items, including office machine parts, internal combustion engine parts, and electrical machinery.

The lack of transparency of Brazil's licensing system inhibits markets access and creates uncertainty for U.S. exporters to Brazil. Brazil maintains these restrictions despite GATT requirements with respect to restrictive import measures imposed for balance-of-payments purposes, including the principle that such measures should not be used to protect a particular industry or sector.

B. Exclusionary Government Procurement

Because governments are among the largest purchasers of goods and services in the world, the United States is working to ensure that opportunities to sell to governments are available to U.S. suppliers. In multilateral negotiations the United States seeks, on a reciprocal basis, the use of procedures that require government procurement decisions to be made on a competitive and non-discriminatory basis. The United States also seeks elimination of specific procurement practices that exclude foreign suppliers.

The following exclusionary government procurement practices are identified as priority practices under section 310:

Japan: Ban on Government Procurement of Foreign Satellites

As part of a "long range vision on space development" Japan prohibits the procurement of foreign satellites by government entities if such a purchase interferes with "indigenous development objectives." Japan's policy of promoting indigenous production capability by prohibiting government procurement of foreign satellites applies to the entire range of satellites (broadcast, communications, earth resource, weather). The United States has long been the world leader in satellite production, and is thus denied significant market opportunities by this policy.

Japan: Exclusionary Procurement of Supercomputers

The United States supercomputer industry has been effectively denied access to the Japanese public sector market despite a 1987 agreement with Japan on supercomputers. The Government of Japan has engaged in a variety of exclusionary practices that have the effect of thwarting the open procurement process, in order to ensure purchase of supercomputers by indigenous producers.

C. Technical Barries to Trade

The United States places high priority on the elimination of trade-restrictive technical regulations and standards. While many legitimate reasons exist for governments to use standards—such as the protection of plant, animal, and human life, or the prevention of consumer fraud—governments sometimes impose technical standards that unnecessarily restrict imports. The European Community's ban on hormone-treated beef, already subject to countermeasures under section 301, is an example where unreasonable standards (in that case, not based on any legitimate scientific judgment) have created unnecessary trade barriers.

The GATT Agreement on Technical Barries to Trade ("Standards Code") commits its signatories to ensure that technical regulations or standards, and related testing and certification schemes, do not create unnecessary obstacles to trade. While the Standards Code has improved the standards-related activities of many countries, an important Uruguay Round objective for the United States is to strengthen and expand the Code further. The administration also places high priority on ensuring that Code signatories abide by existing Code obligations.

The following standards-related practices of Japan have been identified as a priority practice under section 310:

Japan: Restrictive Standards on Wood Products

Access to Japan's market for forest products is impeded by a variety of tariff and non-tariff measures, including technical standards which favor Japanese producers. These practices include wood grading requirements which discriminate against U.S. wood products, as well as a variety of testing standards which impede U.S. exports. Japan maintains these practices despite its obligations under the GATT Agreement on Technical Barriers to Trade to ensure that technical regulations and standards are not adopted or applied in a way which creates unnecessary obstacles to international trade.

D. Trade-Related Investment Measures

The United States supports open investment policies worldwide; all nations will benefit from unrestricted foreign direct investment. In the Uruguay Round, the United States is seeking the elimination of trade-restricting measures imposed by government upon foreign investors. The result of such measures is the distortion of import, export, and manufacturing patterns that would occur absent government intervention, impairing the ability of an enterprise to respond to developments in the marketplace. The United States has made investment restrictions a priority in both bilateral and multilateral negotiations.

The following practice, exemplary of an investment regime that seriously distorts trade, is identified as a priority practice under section 310:

India: Trade-Related Investment Measures

Government approval is required for all new or expanded foreign investment in India. Approval is conditioned upon a number of criteria, including requirements for foreign equity participation. Where approval is granted, the Indian Government often requires investors to use locally-produced goods in the items they produce in India, rather than allowing them to import the best quality and most cost-effective products. Some investors are also required to meet export targets. Such "performance requirements" burden foreign investors, and result in significant trade distortions.

E. Barriers to Trade in Services

Establishment of a comprehensive GATT agreement on trade in services is one of the key U.S. objectives in the Urugray Round. The need for multilateral rules and disciplines covering services trade has become increasingly important as services have grown as a share of total world economic activity. In the Uruguay Round the United States has strongly supported efforts to establish a multilateral framework of principles and rules for services trade, as well as mechanisms for the progressive liberalization of services barriers. The services text adopted by Trade Ministers at the December 1988 Uruguay Round Mid-Term Review in Montreal does much to advance the eventual achievement of these objectives.

In the absence of multilateral rules on services trade, the United States has pursued the liberalization of foreign services markets through bilateral negotiations. In free-trade agreements with both Canada and Israel, bilateral agreement was reached on fundamental principals governing trade in services. In regotiations with Korea, initiated as part of a section 302 investigation in 1985, U.S. negotiators achieved a considerable liberalization of Korea's insurance market. Such bilateral initiatives support and reinforce multilateral efforts to liberalize trade in services.

The following barrier to trade in services is identified as a priority practice under section 310:

India: Insurance Market Barriers

Private insurance companies are not permitted to sell insurance in India. The state-owned General Insurance Company of India and its four subsidiaries have a monopoly on sales of general insurance, and the Life Insurance Corporation of India has a monopoly on the sale of life insurance. India's is the largest remaining closed insurance market; liberalization of that market would create significant market opportunities for U.S. insurance companies, which are competitive worldwide.

III. Other Negotiating Priorities

Section 301 is an important market-opening tool, but it is not a substitute for multilateral negotiations. A key priority of U.S. trade policy is a successful outcome in the Uruguay Round of Multilateral Trade Negotiations. While the Administration is prepared to use section 301, the preferred long-term solution is to achieve improvements in multilateral disciplines and enforcement procedures in the Uruguay Round.

Many trade issues may be better resolved through multilateral agreements under GATT auspices than bilateral initiatives. Because GATT negotiations involve a broad range of issues and sectors, they facilitate a comprehensive approach to resolving a number of interrelated issues. In addition, it is often difficult for governments to agree to eliminate a trade barrier in bilateral negotiations, when other countries can act as "free riders" and take advantage of a more open trading situation without making equivalent concessions.

Thus, some problems, like agricultural subsidies, are difficult to solve absent broad multilateral agreement, since any government that agrees to eliminate subsidies in a bilateral agreement places its producers at a competitive disadvantage with respect to countries that have not assumed a similar obligation.

In this respect, the USTR has determined that certain practices, while important U.S. negotiating priorities, will be better pursued at this time outside of section 301, especially through multilateral negotiations in the Uruguay Round.

Agricultural practices in this category include:

- European Community variable

levies on imports of grains, sugar, dairy products, beef, poultry, eggs, pork and processed products made from these commodities, which afford protection to European producers of these products, adversely affecting U.S. exports to the EC.

• European Community agricultural export subsidies. The EC grants export "restitutions" on a wide range of agricultural products including wheat, wheat flour, beef, dairy products, poultry, and certain fruits, as well as some processed products. The result of such subsidies is downward pressure on world agricultural prices and unfair competition for U.S. exporters in third country markets.

• Japan's import barriers on rice. Japan's strict prohibition on the import of rice adversely affects U.S. rice producers and exporters, and is unjustifiable in light of Japan's GATT obligations.

U.S. priorities in the Uruguay Round agriculture negotiations include the elimination of all trade-distorting subsidies and market access barriers. Thus, elimination of practices such as the variable levy, export subsidies and Japan's rice ban will be pursued in these negotiations.

Another issue better addressed outside of section 301 at the present time is the substantial financial support European Airbus partner governments have provided to their *Airbus consortium* member companies. These supports have taken the form of "soft" loans, loan guarantees, general equity infusions and, more recently, a proposal for exchange rate guarantees. These practices have heavily subsidized both Airbus aircraft development and production, distorting world aircraft trade and threatening to cause serious prejudice to future U.S. aircraft exports. These practices will be pursued actively in both bilateral and multilateral fora.

The United States will continue to pursue negotiations in the Uruguay Round aimed at eliminating these trade-distorting practices and their effects on U.S. exports; and the USTR will assess the progress made toward that goal in the context of next year's Super 301 process.

Authority: Section 310(a)(1)(D) of the Trade Act of 1974, as amended, 19 U.S.C. 2420(a)(1)(D).

Joshua B. Bolten,

General Counsel.

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SECURITIES AND EXCHANGE ACT

[Rel. No. 34-26882; File No. SR-CBOE-88-20, Amdt. No. 2]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Basket Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1989,[1] the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

1. Text of Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend and restate its filing SR-CBOE-88-20 relating to market baskets in stocks as set forth below. Chapter XXVI is entirely new.

CHAPTER XXVI

MARKET BASKETS

Introduction

The rules in this Chapter are applicable only to market basket contracts (as defined below). Market basket contracts are deemed to be index option contracts for purposes of the rules of the Exchange so that the rules in Chapter I through XIX and in Chapter XXIV are also applicable to market baskets, in some cases supplemented by rules in this Chapter, except for rules that have been replaced in respect of market baskets by rules in this Chapter and except where the context otherwise requires. Whenever a rule in this Chapter supplements, or for purposes of this Chapter, replaces rules in Chapter I through XIX or in Chapter XXIV, that fact is indicated following the rule in this Chapter.

Definitions

Rule 26.1(a) When used in Chapter I through XIX and in Chapter XXIV, the following terms have the following meanings in respect of the market basket contracts provided for in this Chapter, unless the context otherwise requires:

Class

(1) The term "class" means all market basket contracts based on the same stock index.

[Replaces Rule 1.1(q)]

Underlying Security

(2) The term "underlying security" means the stocks comprising the index on which the market basket is based.

[Replaces Rules 1.1(u) and 24.1(e)]

(b) When used in this Chapter, unless the context otherwise requires:

Index Multiplier

(1) The term "index multiplier" means the amount specified in the market basket contract as the index multiplier for that contract.

[Replaces Rule 24.1(f)]

Market Basket, Market Basket Contract

(2) The term "market basket" or "market basket contract" means a contract obligating the seller to sell and the purchaser to purchase a designated number of shares of each of the stocks comprising the index on which the market basket is based (i.e., the "component stocks"), with delivery of such shares to be made as provided in the Rules of the Clearing Corporation and the rules of correspondent stock clearing corporations. Market basket contracts shall be designated soley by reference to the index on which the market basket is based. Component stocks need not satisfy the requirements of Rule 5.3.

[Replaces Rules 5.1, 5.3 and 24.2]

Terms of Market Basket Contracts

Rule 26.2(a) The quantity of the component stocks deliverable upon settlement of a market basket equals the weighted number of shares of each stock included in the index upon which the market basket is based, determined as of the opening of business on the trade date, multiplied by the index multiplier for that market basket and rounded to the nearest whole number of shares (a fraction of one-half or higher being rounded up).

(b) The index multiplier for market baskets based on the Standard & Poor's 100 Stock Price Index shall be 5,000. The index multiplier for market baskets on the Standard & Poor's 500 Stock Price Index shall be 5,000.

Interpretations and Policies:

.01 In determining the number of shares of each of the component stocks in a market basket that must be delivered upon settlement thereof, the total number of outstanding shares of each such stock, stated in millions of

[1] The Chicago Board Options Exchange, Incorporated originally filed SR-CBOE-88-20 with the Commission on November 1, 1988, and filed Amendment No. 1 to the filing with the Commission on January 13, 1989 and Amendment No. 2 on May 12, 1989.

shares, is divided by the index divisor for that class of market basket contract. The resulting quotient (the "weighted number of shares") is then multiplied by the index multiplier for that class of market basket to determine the number of shares of that component stock that are deliverable upon settlement, subject to the requirement that any fractional amount is to be rounded to the nearest whole share. In determining the weighted number of shares of a component stock (which number is to be rounded to four decimal places), the number of shares outstanding is expressed in millions of shares rounded to three decimal places and the index divisor is rounded to four decimal places.

For example, if on the opening of business on a given trade date XYZ Corp. has 130.257 million shares outstanding and the index divisor for the Standard & Poor's ("S&P") 500 Stock Price Index market basket is 3022.4168, the weighted number of shares of XYZ stock will be 0.0431 (130.257÷3022.4168). The number of shares of XYZ stock deliverable upon settlement of an S&P 500 market basket purchased in a trade on that day would be equal to the weighted number of shares (0.0431) multiplied by 5,000 (the index multiplier for S&P 500 market baskets), or 216 shares (0.0431×5,000=215.5).

.02 For the purpose of settling the obligations resulting from the purchase or sale of a market basket contract, the index divisor and the number of shares outstanding of each of the component stocks shall be determined by the Exchange based solely upon information provided to the Exchange by the reporting authoriy as of the opening of business on the trade date. The Exchange's determination shall be final and conclusive.

[Replaces Rules 5.6, 6.4 and 24.9]

Meaning of Bids and Offers

Rule 26.3 Bids and offers shall be expressed in terms of dollars and decimals per unit of the index to two decimal places and shall be multiplied by the index multiplier for the applicable contract to arrive at the total amount of the bid or offer (*e.g.*, a bid of 250.00 for a market basket having an index multiplier of 5,000 would represent a bid of $1,250,000 for that market basket).

[Replaces Rules 6.41, 6.42 and 24.8]

Disseminaton of Information

Rule 26.4 (a) The Exchange shall disseminate or cause to be disseminated after the close of business and from time-to-time on days on which transactions in market baskets are made on the Exchange: (i) the current index value; (ii) the price at which each transaction in market baskets has been effected and the transaction volume at such price; and (iii) the prices at which bids and offers are made on the floor of the Exchange. The Exchange shall maintain, in files available to the public, information identifying the component stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

(b) The Exchange shall, after the close of each trading day in which transactions in market baskets have been effected, disseminate or cause to be disseminated the volume of trading in each class of market basket contracts and the volume of trading in each of the component stocks represented by such market basket trading.

[Replaces Rule 24.3]

Opening of Trading

Rule 26.5 The Order Book Official shall conduct the opening procedures for each class of market baskets at or as soon as practicable after 8:30 a.m. Chicago time, or upon a resumption in trading after trading has been halted or suspended, in such a manner as to result in a single price opening.

Interpretations and Policies:

.01 Rule 24.13, Interpretation and Policy .03 shall apply to the opening of trading in market basket contracts.

[Replaces Rules 6.2 and 24.13]

Position Limits

Rule 26.6 Market baskets shall not be subject to, or taken into account in connection with, the provisions of Rule 4.11.

[Replaces Rules 4.11 and 24.4]

Exercise Limits

Rule 26.7 Market baskets shall not be subject to, or taken into account in connection with, the provisions of Rule 4.12.

[Replaces Rules 4.12 and 24.5]

Delivery and Payment

Rule 26.8 Delivery of the component stocks upon the sale of a market basket contract, and payment of the contract price in respect thereof, shall be in accordance with the Rules of the Clearing Corporation and the rules of correspondent stock clearing corporations. As promptly as possible after the entry into such a contract, the member ogranization shall require the customer: (i) in the case of a purchase, to make full cash payment of the contract price; or (ii) in the case of a sale, to deposit each of the component stocks, in the amount specified in Rule 26.2, of those stocks are not carried in the customer's account in amounts sufficient to make delivery; or (iii) in either case, to deposit the required margin in respect thereof, if the transaction is effected in a margin account, in accordance with the Rules of the Exchange and the applicable regulations of the Federal Reserve Board. Notwithstanding the foregoing, a Market-Maker that has on the same day purchased and sold one or more market baskets of the same class may settle the obligations arising from such purchase and sale by the payment or receipt, as the case may be, of the difference between the cost of such purchase and sale, as provided in the Rules of the Clearing Corporation.

[Replaces Rule 11.3]

Margins

Rule 26.9 The margin requirements for market basket contracts shall be determined in accordance with the provisions of Chapter XII of the Rules, which shall apply to the positions (long or short) in the component stocks deliverable pursuant to the market basket contract.

[Replaces Rule 24.11]

Doing Business With the Public

Rule 26.10(a) The provisions of Chapter IX of the Rules shall be applicable to market baskets except that Rule 9.7(b) (relating to the opening of customer accounts), Rules 9.7(e), 9.15, and 9.21(d) (relating to the options disclosure document and to the prospectus of The Options Clearing Corporation), and Rule 9.11 (relating to the confirmation of transactions) shall not be applicable to market basket contracts.

(b) In approving a customer's account for market basket transactions, a member organization shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.8. Based upon such information, the branch Office manager or other officer of the member organization shall approve in writing the customer's account for market basket transactions.

(c) At or before the time a member organization provides the first written confirmation to a customer of a market basket transaction, that member organization shall provide to such customer a written description, substantially in the form provided by

the Exchange, of the mechanics and risks of trading in market basket contracts.

(d) A member organization shall promptly furnish to each customer a written confirmation of each transaction in market basket contracts. Each such confirmation shall show the class of market basket (i.e., the stock index on which the contract is based), contract price, number of market basket contracts purchased or sold, number of shares of each of the component stocks to be purchased or sold in settlement of the market basket contract, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction.

Interpretations and Policies:

.01 It shall be sufficient in any case where the customer has on the same date purchased and sold a market basket contract of the same class to provide a confirmation statement reflecting the terms of such purchase and sale, including the amount of any credit or debit to the customer's account, without regard to the component stocks underlying those contracts.

[Replaces Rules 9.7(b), 9.7(e), 9.11, 9.15 and 9.21(d)]

Market-Makers

Rule 26.11 (a) *Appointment.* On a form or forms prescribed by the Exchange, a registered Market-Maker may apply for an Appointment in one or more classes of market basket contracts. A Market-Maker that is so appointed shall have the obligations set forth in this Rule and also shall be subject to the provisions of Chapter VIII of the Rules, other than Rules 8.3 and 8.7. A Market-Maker that is not so appointed shall not be permitted to participate as a Market-Maker in market basket transactions. No Appointment for market basket contracts shall be made without the Market-Maker's consent to such Appointment. The Market Performance Committee may suspend or terminate any Appointment of a Market-Maker under this Rule and may make additional Appointments whenever, in the Committee's judgment, the interests of a fair and orderly market are best served by such action. A member or prospective member adversely affected by a determination made by the Market Performance Committee under this Rule may obtain a review thereof in accordance with the provisions of Chapter XIX.

(b) *Financial Requirements.* A Market-Maker shall not be subject to Appointment in any class of market basket contracts unless that Market-Maker has satisfied such minimum financial requirements as may be established from time to time by the Floor Directors Committee. Failure to remain in compliance with such requirements shall be grounds for the suspension or termination of a Market-Maker's appointment in any class of market basket contracts.

(c) *Obligations.* Transactions of a Market-Maker in market basket contracts should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no Market-Maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings. A Market-Maker appointed for a class of market basket contracts has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for that class of market basket contracts, or a temporary distortion of the price relationships between market baskets of the same class. Without limiting the foregoing, a Market-Maker is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) To compete with other Market-Makers to improve the market in each class of market basket contract for which the Market-Maker has been appointed at the station where the Market-Maker is present.

(ii) At the request of another member of the Exchange or at the request of the Order Book Official, to make markets at the station where a Market-Maker is present by providing bid and/or offer quotations that are subject to immediate acceptance for one market basket contract.

(iii) To update market quotations in response to changed market conditions at the station where a Market-Maker is present.

Interpretations and Policies:

.01 Rule 8.7, Interpretation Policy .04 shall apply to market baskets.

.02 Market-Makers appointed to trade in any class of market basket contracts shall not effect purchases or sales on the floor of the Exchange except in a reasonable and orderly manner.

[Replaces Rules 8.3 and 8.7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

CBOE previously has filed with the Commission rules relating to the trading of market basket contracts (File No. SR-CBOE-88-20). The purpose of the present filing is to restate and clarify the rules governing the trading of market baskets.

In essence, a market basket is a contract that it settled by the physical delivery of the stocks comprising a selected index (the "component stocks"), with the individual stocks delivered in proportion to their weighting in that index. Unlike the traditional options also traded on CBOE, market baskets will not have an exercise price or an expiration date. Instead, the buyer of a market basket will be obligated to purchase and the seller will be obligated to sell a specified quantity of shares of each of the component stocks of a designated stock market index. Settlement of the purchase and sale of the component stocks will take place on the fifth business day after trade date in accordance with the rules of a correspondent stock clearing corporation.

The rules relating specifically to market baskets will be set out in new Chapter XXVI of CBOE Rules. Although market baskets are not options, they will be treated as index options under CBOE Rules, so that the rules in Chapters I through XIX (the general rules of the Exchange) as well as the rules in Chapter XXIV (CBOE's index option rules) generally will be applicable to transactions in market baskets to the extent not supplemented or replaced by the rules in Chapter XXVI a description of the changes proposed to be made to CBOE Rules is set forth below, together with a discussion of the regulatory treatment of certain aspects of market basket contract trading.

A. Proposed Rule Changes

Rule 26.1 sets forth certain definitions that are applicable specifically to market baskets. The terms "market basket" and "market basket contract" are defined to mean a contract obligating the seller to sell and the purchaser to purchase a designated number of each of the stocks included in the index on which the market basket is based (the "component stocks"). The "index multiplier" is defined to mean the amount specified in the market basket contract as the index multiplier for that contract (*see* Rule 26.2). This differs from the definition of this term in Chapter XXIV and would be applicable solely to the market basket rules in Chapter XXVI.

Other terms—specifically, "class" and "underlying security"—have been defined to vary their meaning elsewhere in the rules of CBOE when those terms are used in the context of market basket contracts. In particular, "class" is specially defined in Rule 26.1 to mean all market basket contracts based on the same stock index. References in CBOE rules to a "class" of index options will mean, in the case of market basket contracts, all such contracts that are based on the same stock index. The term "underlying security" similarly has been defined to mean the stocks comprising the index on which the market basket is based (*i.e.*, the component stocks).

The terms of the market basket contracts are set forth in Rule 26.2 which describes the quantity of component stocks that will be deliverable upon settlement of a market basket contract. That rule provides that each of the component stocks is deliverable in an amount equal to that stock's weighted number of shares in the index times the index multiplier (subject to any rounding to the nearest whole share). The weighted number of shares is determined by dividing the total number of shares oustanding (stated in millions of shares) by the divisor for that index.

To illustrate, the index multiplier for the Standard & Poor's ("S&P") 500 Stock Price Index market is 5,000. If XYZ Corp. has 130.257 millions shares outstanding and if the divisor for the S&P 500 (expressed to four decimal places) is 3022.4168, the weighted number of shares for XYZ Corp. would be 0.0431 (130.257÷3022.4168). The purchaser of the S&P 500 market basket would receive 216 shares (.0431×5,000) of XYZ stock, together with the stock of the other companies whose shares comprise the index in amounts corresponding to their respective weightings in the index (except to the extent that fractional shares are rounded to whole numbers in accordance with Rule 26.2). In determining share weightings (and, correspondingly, the number of shares of each component stock that is to be delivered), the number of shares outstanding is expressed in millions and decimals thereof (*e.g.*, 130.257).

As provided in Rule 26.2 the index multiplier for both S&P 100 and S&P 500 market baskets is 5,000, resulting in single S&P 100 (OEB) and S&P 500 (SPB) market baskets covering stocks having a value of approximately $1,455,000 and $1,545,000, respectively, at present index levels. Rule 263, in turn, provides that bids and offers are to be multiplied by the index multiplier for the contract in question.

Trading in market baskets ordinarily will be conducted between 8:30 a.m. and 3:15 p.m. Chicago time, and Rule 26.5 provides that it will be the responsibility of an Order Book Official ("OBO") to establish daily a single opening price for each class of market baskets (*i.e.*, the S&P 100 class and the S&P 500 class). CBOE Rule 7.1 separately provides that the OBO, an Exchange employee, is responsible, among other things, for maintaining the limit order book and for displaying bids and offers in the book. As provided in Rules 7.7 and 7.8, the OBO is required continuously to display the highest bid and the lowest offer and the quantity at those prices and may disclose the price and number of contracts bid below or offered above the best bid and offer. The OBO also is authorized and directed to execute customer orders left on his book and, as provided in Rule 6.45, such bids and offers have priority over bids and offers in the trading crowd at the same price except in the circumstances specified therein. CBOE intends to cause these same procedures to be applied to the trading of market baskets.

Rules 26.6 and 26.7 provide that position limits and exercise limits will not apply to market baskets since there will be no open interest in, and no exercise of, market basket contracts. Instead, all transactions in market baskets will be settled by the delivery of the component stocks. Thus, exercise limits have no application to market baskets and, for the same reasons that there are no numerical restrictions on the ownership of shares of individual common stock, position limits should not apply.

Rule 26.8 provides that delivery of the component stocks by the seller of a market basket and payment therefor by the purchaser are to be in accordance with the rules of The Options Clearing Corporation ("OCC") and the rules of correspondent stock clearing corporations. OCC will be responsible for the initial clearance and settlement of all trades in market basket contracts effected on CBOE, including the neeting of offsetting market basket trades in the accounts of Market-Makers and the cash settlement of any differences between the trade price and the prices at which purchases and sales of the component stocks are settled at correspondent stock clearing corporations. It is anticipated that OCC will require both sides to the trade to maintain margin at a level adequate to cover the market risk of open positions during the interval between trade date and settlement date. (This will be addressed specifically in the rule change filing that OCC will make in respect of market basket contracts.) The actual settlement in all positions in stock resulting from the trading in market baskets will take place through correspondent stock clearing corporations, as currently is the case with the settlement of exercises of equity options, based upon information provided by OCC.

CBOE has not adopted special rules for the margining of market baskets, but instead proposes that market baskets be margined in respect of the positions in common stock that result from settlement of the market basket contract. This reflects that persons trading in these contracts will not have a position in "market baskets" as a separate security at the end of the trading day but will instead have an obligation to deliver or pay for and receive the component stocks on the settlement date. Rule 26.9 accordingly specifies that the provisions of Chapter XII of CBOE Rules, which sets our margin requirements generally applicable to all margins accounts of customers, will be applicable to the long or short positions in the component stocks resulting from the trading of market basket contracts. Among other things, Chapter XII incorporates the margin requirements of Regulation T of the Federal Reserve Board (Rule 12.1), establishes maintenance margin requirements for customers' securities positions held in margin accounts (Rule 12.3), and prohibits customers from engaging in "free riding," the practice of satisfing margin requirements by the liquidation of positions in the customer's account (Rule 12.9).

Applying Regulation T to long and short stock positions resulting from transactions in market basket contracts generally will mean that purchasers of market baskets in margin accounts will be required initially to deposit 50% margin in respect of each long stock

position, and that sellers of market baskets who are short the component stocks as a result of those sales (that is, where the seller of the market basket does not own one or more of the stocks in an amount sufficient to deliver on settlement of the contract) will be subject to the 150% margin requirement of Regulation T in respect of those stocks sold short. Market-makers would not be subject to these general requirements. Instead, and as provided in Regulation T, a Market-Maker in market basket contracts would be entitled to "good faith" margin treatment for all market baskets transactions in the same manner as any other specialist who makes a market in a particular security.

The Exchange intends to apply substantially all of its customer protection rules to market basket trading. In considering the subject of customer protection, however, it is important to note that the unit of trading for market baskets will cover stocks having a value of approximately $1.5 million, limiting interest in these contracts only to the largest and most sophisticated institutional investors. These investors, who can be assumed to understand the risks of buying and selling large blocks of stock in complex hedge or arbitrage strategies, and who have the financial means to carry such positions and assume the related risk, do not require the same degree of protection in matters of customer protection (such as suitability) as do retail investors.

Nevertheless, new Rule 26.10 provides that, with a small number of specific exceptions, Chapter IX of CBOE's rules ("Doing Business With the Public") will apply to CBOE members in respect of their customer business in market baskets. For purposes of Chapter IX, market baskets will be deemed to be index options, and therefore will be subject to the rules covering supervision suitability, restrictions on acting for persons affiliated with exchanges or other members, assuming losses, communications with customers and complaints.

Since a completed trade in a market basket contract does not result in the issuance of a separate security, but instead is settled by the delivery of the component stocks, there will be no registration statement or prospectus issued under the Securities Act of 1933 and no disclosure document issued or disseminated to customers in connection with market basket trading. Rule 26.10 accordingly provides that CBOE rules relating to those subjects are not applicable to market baskets. CBOE, however, will prepare and make available to its members a written description of the mechanics and risks of market basket trading and CBOE member organizations will be required to provide this document to their customers.

CBOE Rule 9.11, relating to the confirmation of transactions to customers similarly will not be applicable to market baskets. In its place, Rule 26.10 specifies that Exchange member organizations must provide in customer confirmation statements details not only as to the market basket transaction itself, but also information identifying each of the component stocks deliverable in satisfaction of the obligations arising out of market basket trading.

CBOE Rule 9.7(b) establishes special procedures that govern the opening of accounts for option customers, including a requirement that a Registered Options Principal ("ROP") approve the opening of the account. As provided in Rule 9.2, ROP's are required to complete a qualification examination and must be approved by the Exchange. These additional qualifications are inapplicable to the trading of market baskets and also are not necessary for the protection of the customers that will be purchasers or sellers of market baskets. Rule 26.10 accordingly provides that accounts for customers who wish to purchase or sell a market basket may be approved by the branch office manager or some other officer of the member organization.

Like other contracts traded on CBOE, market baskets will be traded by competing Market-Makers, who act as dealer-specialists in trading for thier own accounts (*see* Rule 8.1), and by floor brokers who represent customers' orders on an agency basis. Most of the Rules in Chapter VIII ("Market-Makers and Block Positioners") will apply to trading in market basket contracts. For example, the rules relating to Market-Maker registration (Rule 8.2), Clearing Member letters of guarantee (Rule 8.5), restrictions on acting as a Market-Maker and floor broker (Rule 8.8), and reporting of transactions in securities other than options (Rule 8.9) will apply these contracts.

Other provisions of the Exchange's Market-Maker rules have been modified in their application to market baskets, however. Whereas a CBOE Market-Maker ordinarily may trade in classes of options to which his appointment under Rule 8.3 does not extend as long as such trading is not in delegation of his obligations in his appointed classes (as provided in Rule 8.7), Rule 26.11(a) provides that Exchange members will not be permitted to act as Market-Makers in market basket contracts absent an appointment by the Exchange for that class of market basket contract. An Exchange member that is not so appointed remains free to execute customer orders as a floor broker, however. Rule 26.11(b) separately authorizes the establishment of minimum financial requirements, in addition to the Clearing Member guarantee set forth in Rule 8.5, for Market-Makers that wish to trade in market basket contracts.

The responsibilities of a Market-Maker in market baskets parallel the provisions of existing Rule 8.7. As set forth in new Rule 26.11(c), a Market-Maker would be expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for that class of market baskets, or a temporary distortion of the price relationships between market baskets of the same class. This is essentially the same standard as applies to all CBOE Market-Makers. More particularly, Market-Makers in these contracts will be expected to compete with other Market-Makers to improve the markets in each class of market basket contracts for which the Market-Maker has been appointed at the station where the Market-Maker is present. In addition, Market-Makers will be expected to make markets, at the request of another member or the Order Book Official, by providing bids and/or offer quotations that are subject to immediate acceptance for one contract. This standard, which differs from the five-contract requirement of Rule 8.7.05, is based upon the size of each market basket contract. Finally, and as with other contracts traded on the Exchange, Market-Makers would be expected to update market quotations in response to changed market conditions at the station where the Market-Maker is present.

B. Antimanipulative Rules

(i) *Rule 10a–1.* CBOE does not believe that the short sale rule (Securities Exchange Act Rule 10a–1) should apply to transactions in market basket contracts. It is readily apparent that a trading market in market baskets could not function if sales of such contracts were subject to the short sale rule. CBOE believes that sales of market baskets should be exempted from the short sale rule, however, essentially because the reasons for the rule do not

require it to be applied to market baskets. The fundamental purposes of the short sale rule are to prevent speculative selling from accelerating a decline in the price of equity securities and to prevent "bear raiding" (a form of manipulation). It is virtually inconceivable, however, that any person would seek to sell all of the stocks underlying a broad-based index such as the S&P 100 or the S&P 500 merely to affect the price of a single stock. Thus, no valid regulatory purpose would be served by causing transactions in market baskets, involving 100 or 500 stocks, to be subject to the provisions of a rule that is designed to prevent manipulative practices from affecting the price of individual stocks.

The "tick test" incorporated by the short sale rule also cannot be reasonably applied to market baskets. A tick test based upon the prices of all the component stocks is obviously unworkable because it is unrealistic to expect that the last reported sales in all of the stocks underlying a market basket will ever be on a plus tick or a zero-plus tick at any one time. Since there always will be sellers of market baskets who do not own all of the component stocks, application of the tick test to the 100 or 500 component stocks would adversely affect the liquidity of a market basket contract.

Although a tick test conceivably could be based upon the prices at which the baskets themselves trade (*i.e.*, without regard to the prices of their component stocks), this approach fails to take into account the anticipated discontinuity in market basket trading. Specifically, CBOE expects that the extraordinary size of market basket trades (approximately $1.5 million/contract) will result in no more than a small number of these trades being executed each day. As a result, a trade in market baskets could be made at a price that represents a minus or zero-minus tick from the preceding basket price at a time when the underlying stock market is rising. In effect, therefore, short sales would be prohibited under the rule, even in a rising market, until the last basket sale price could be bettered.

Application of the tick test to the market baskets themselves also could effectively preclude short sales of market baskets during a declining market—precisely the time when the "shock absorbing" benefits of market basket trading would be most useful. To deny institutions, broker-dealers, and arbitrageurs the ability to sell market baskets when the market is falling (unless they own and intend to deliver all 100 or 500 stocks) would leave those traders with the same unsatisfactory alternatives as presently exist, including trading in stock index futures which are not subject to any type of short sale restrictions.

(ii) *Rules Adopted under Section 10(b).* In considering the application to market basket trading of the various antimanipulative rules adopted under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), it is important to keep in mind that a market basket contract is simply a mechanism for trading in stocks and is not itself a separate security. Purchasers and sellers of a market basket contract are, in effect, purchasers and sellers of the stocks that comprise the index on which the basket is based. Market basket transactions result in long or short positions in the component stocks, and do not result in any continuing or open positions in the baskets themselves. Thus, most of the antimanipulative rules adopted under Section 10(b) will apply to transactions and positions in stocks effected through market basket trades to the same extent as those issued through ordinary stock trades.

Specifically, Rules 10b–2, 10b–3, 10b–5, 10b–6, 10b–7, 10b–8, 10b–13, 10b–16, 10b–18 and 10b–21(T) all would appear to apply to transactions in stocks effected through market basket contracts, even though, as discussed below, it may ultimately prove necessary to exempt market basket transactions from certain of these rules. Rules 10b–9 and 10b–17 would appear to have no application to market basket transactions.

Rule 10b–4, which addresses the practice of "short tendering" of securities, likewise should present no problem in its application to market basket trading, since a market basket contract represents, in the words of the rule, "an unconditional contract, binding on both parties thereto," to purchase or sell each of the stocks included in the contract. Thus, a purchaser of a market basket contract should be deemed to own each of the component stocks for purposes of Rule 10b–4, and a person's net long position in stocks should be reduced by the number of shares deliverable pursuant to any market basket contract that the person has sold.

Rule 10b–10, dealing with confirmations to customers, would apply to confirmations of market basket transactions as described above in the discussion of proposed CBOE Rule 26.10.

It is possible that after there has been some experience with trading in market basket contracts, there may appear to be a need for exemptive relief from certain of the foregoing rules. For example, it may appear that rules such as Rule 10b–6, 10b–7 or 10b–13, each of which restricts transactions in securities under certain conditions, ought not to apply to restrict the purchase or sale of individual securities that occur in the context of a transaction in a broadly based, block-size market basket contract. To the extent that any such exemptions prove to be desirable, they will be the subject of appropriate written requests.

C. Other Regulatory Matters

(i) *Location of Trading Post.* CBOE contemplates that market baskets will be traded adjacent to the post or posts at which traditional index options are traded. The Exchange believes that this arrangement will enhance the efficiency of both markets by minimizing price disparities between market baskets and index options and facilitating hedging and other trading strategies involving both types of index contract. This arrangement should not present any of the potential abuses at which restrictions against certain forms of side-by-side trading are directed, since both market baskets and the related index options are priced derivatively in relation to the prices of component or underlying stocks in the principal markets in which such stocks are traded.

(ii) *"Front-Running."* CBOE has from time to time issued educational circulars for the purpose of informing the membership of CBOE policy with respect to certain matters arising under the rules of Exchange. To this end, the Exchange has issued Educational Circular No. 23 which presents the Exchange's enforcement policy with respect to certain practices generally known as "front-running." That Circular has been revised twice since its issuance in 1978, most recently in February 1986. The most recent version of that Circular makes clear CBOE's position that a person engaging in front-running (as defined) involving index options violates CBOE Rule 4.1 ("Just and Equitable Principles of Trade"). CBOE will make clear in announcements to its membership that existing prohibitions against front-running apply to market baskets and, if necessary, will further amend Educational Circular No. 23 to address trading in market baskets.

(iii) *Last Sale and Quotation Reports.* Since CBOE proposes to trade stocks only in the context of market basket contracts and not individually, the last sale and quotation information to be made available for market baskets will be limited to the price at which the

basket last traded, the size of the trade, and the current bid and offer for the basket. Last sale and quotation information will not be reported separately for each stock. To do otherwise would require "exploding" a basket trade or quote among the component stocks pursuant to an arbitrary allocation formula, which would not present an accurate picture of the market in these stocks.

Reflecting the derivative nature of bids and offers in market baskets, bids and offers for market baskets should not be subject to Exchange Act Rule 11Ac1–1 (govering securities quotations) for the same reason that put and call options traded on CBOE have never been subject to that Rule. A market basket bid or offer quotation necessarily depends upon the latest quotations in all of the component stocks of the basket and is subject to change whenever quotations in any of these stocks change. In such circumstances, if would be inappropriate to require a Market-Maker's bid or offer to remain firm for any stated period of time, during which the prices of the component stocks may have changed. As is the case for options, bids and offers for market baskets will be firm when made (*i.e.*, bids and offers will be subject to immediate acceptance up to the quantity stated in the bid or offer) and the dissemination of these bids and offers will present an accurate and meaningful indication of the state of the market at that time.

The last sale and quotation reports for baskets will be disseminated on a current basis over the system of the Options Price Reporting Authority. CBOE also intends to make appropriate arrangements for the dissemination of total end-of-day volume in the market baskets and in each of the component stocks as a result of market basket trading.

(iv) *Exemption of Component Stocks from Section 12(a) of Exchange Act.* Insofar as the trading of market basket contracts on CBOE may be viewed as encompassing the exchange trading of the component stocks of the basket, the individual component stocks should be exempted from Section 12(a) of the Exchange Act in order to eliminate the need to list the component stocks on CBOE or to apply for unlisted trading privileges in the component stocks. Such an exemption would be comparable to the exemption for stocks underlying listed options provided for in Exchange Act Rule 12a–6, and would be based upon considerations similar to those that supported the adoption of that Rule. A similar exemption has recently been extended to the stocks underlying index participations proposed to be traded on CBOE and other exchanges. (*See* Exchange Act Release No. 34–26709 (April 11, 1989)). As is the case with stocks underlying options and index participations, component stocks of market basket contracts may be thought of as traded on CBOE only in the most narrow sense, since component stocks will be traded only as part of a basket of at least 100 stocks, and will not be traded individually. Each of the component stocks will be listed on one or more other national securities exchanges or will be traded on the NASDAQ system, and therefore will be registered under Section 12 of the Exchange Act by virtue of such listing or trading. No benefit to investors would result from requiring the additional registration of such component stocks for CBOE. On the other hand, if registration were required, as a practical matter CBOE would have to be extended unlisted trading privileges ("UTP") in each present and future component stock.

In order to avoid the need for a blanket UTP application, CBOE believes the better approach would be for the Commission to amend Rule 12a–6 for the purpose of exempting from Section 12(a) those stocks that are traded on a national securities exchange only as component stocks of a market basket contract.

(iv) *Net Capital.* Broker-dealers taking positions in market baskets will, at the end of the trading day, be long or short the component stocks as a result of these basket transactions. The Exchange anticipates that the resulting position in stocks will be subject to the normal "haircuts" set out in paragraphs (c)(2)(vi)(J) and (f)(3)(ii) of the Commission's net capital rule (Exchange Act Rule 15c3–1). CBOE further anticipates that positions in the component stocks resulting from the trading of market baskets will be subject to lesser haircuts where those positions are offset by broad-based index options or futures contracts, consistent with positions taken previously by staff of the Commission.

The proposed rule change is consistent with the requirements of Section 6(b) of the Exchange Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that the proposed rule change is intended to prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 1, 1989.

[FR Doc. 89–13517 Filed 6–6–89; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26876; File No. SR-PSE-89-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By Pacific Stock Exchange Incorporated Relating to Changes in PSE Membership Rates and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), I5 U.S.C. 78s(b)(1), notice is hereby given that on May 18, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, is submitting this proposed rule change to amend the text of PSE Rule IX, Membership, in order to incorporate changes to membership-related fees which were previously approved by the Commission.

The amendments to the text of Rule IX, reflecting the current membership-related charges in the Fee Schedules for Equities and Options operations, are summarized as follows:

—Membership application fee increased from $250 to $350
—Joint Account Application fee increased from $250 to $350
—Inter-Firm and Intra-Firm transfer fee increased from $200 to $250
—Seat Sale Transfer fee $200
—Lease fees increased from $300 to $350

The PSE believes that proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable dues, fees and other charges among members using the facilities of the PSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Changes in membership-related fees and charges were incorporated into the Fee Schedules, in conjunction with overall changes to the PSE's fee structure for Equities and Options operations, and submitted for Commission consideration in SR–PSE–88–11. Pursuant to section 19(b)(3)(A) of the Act, the proposed fees were effective upon filing with the Commission.[1] The changes in membership-related fees and charges were not, however, incorporated into the actual text of the PSE Membership Rule, Rule IX. The instant proposed rule change will incorporate the changes to membership related fees and charges previously adopted in SR–PSE–88–11 into PSE Rule IX. No additional changes are made by this proposed rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule filing has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–89–12 and should be submitted by June 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 30, 1989.

[FR Doc. 89–13518 Filed 6–6–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26877; File No. SR-PSE-89-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By Pacific Stock Exchange Incorporated Relating to Changes in Basis for Calculating Initial Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, has submitted this proposed rule change to alter the basis for determining initial membership fees. PSE Rule IX, Section 9(a)(i)(a), currently provides that the initial fee for the purchase of a membership by an individual not associated with a member organization shall be 5 percent of the purchase price with a minimum of $250 and a maximum of $3,500. This language also appears in the PSE Schedule of Rates and Charges for Equities and for Options.

[1] 15 U.S.C. 78s(b)(1)(1982).
[2] 17 CFR 240.19b–4 (1988).

The proposed rule change would amend Rule IX, Section 9(a)(i)(a), to provide that the initial membership fee be 5 percent of the average of the purchase price plus the two preceding seat sales rather than 5 percent of the purchase price. Commentary .01(b) to Rule IX also references the basis for calculating the initial membership fee and would be similarly amended. In addition, the PSE Schedule of Rates and Charges for Equities and Options would be amended to reflect the change to Rule IX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 10, 1987, certain options members submitted a petition to the PSE's Board of Governors proposing that the initial membership fee of 5 percent be based on the average of the purchase price plus the two preceding seat sales, rather than on the purchase price of the membership.

PSE Rule IX, Section 9(a)(i)(a) bases the initial membership fee on 5 percent of the last negotiated sale of a seat at the time of activation. The maximum initial membership fee is capped at $3,500. This fee also appears in the PSE Schedule of Rates and Charges for Equities and for Options. At its December 21, 1987 meeting, the PSE Board of Governors instructed Exchange staff to conduct a study with regard to the basis the Exchange uses to determine the initial membership fee.

Exchange staff conducted a statistical analysis comparing seat sales from 1984–1987 on a 3 seat sale moving average basis versus a 13 week seat sale moving average basis. Staff found that the 3 seat sale moving average was a better indication of current seat values than the 13 week average. Also, the 3 seat sale average would be easier and less time consuming to calculate than the other. In comparison to current policy, the 3 seat sale average would prevent basing the initial membership fee on one very high or one very low sale price by averaging it with two others.

The PSE believes that the proposed amendment is consistent with section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable dues, fees and other charges among the members using the facilities of the PSE.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On December 10, 1987, certain options members submitted a petition to the Board of Governors proposing that the basis for determining initial membership fees be changed as stated herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commissio, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–89–11 and should be submitted by June 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–13519 Filed 6–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26884; File No. SR–PSE–88–24]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Restructuring of PSE Committees and the Formalization of the Rules and Procedures Affecting Those Committees

On October 26, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article IV of the Exchange's Constitution relating to committees, and to provide formalized rules and procedures for committees in a new and separate Rule XXII in the Exchange's Rules of the Board of Governors. The proposed rule change was noticed in Securities Exchange Act Release No. 26359 (December 14, 1988), 53 FR 51611 (Dec. 22, 1988). No comments were received on the proposed rule change.

The Exchange states that the purpose of replacing Article IV of the Constitution with a new Article IV and creating new Rule XXII is to modernize the provisions in the Constitution that list and define committees, and to formalize the rules and procedures that affect all committees.

Currently, Article IV of the PSE Constitution identifies ten standing committees. The Exchange's proposal reduces the number of committees in Article IV to five, and places all other committees in a new Rule XXII of the Rules of the Board of Governors. In this regard, the Exchange notes that three of the committees currently listed in Article IV no longer exist.[3] In addition, the PSE proposes to provide in new Rule XXII descriptions of additional committees which recently have been appointed.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] Under the proposal, the Clearing Committee, the Organization Review Committee and the Public Relations Committee no longer will be identified as standing committees of the Exchange.

Article IV of the Constitution will be amended to provide a brief description of the powers and duties of the members of the five committees which have been in continuous existence at the Exchange: the Equity Allocation Committee, Equity Floor Trading Committee, Options Listing Committee, Options Floor Trading Committee, and the Ethics and Business Conduct Committee.[4] The remainder of PSE's committees will become a part of Rule XXII and will be categorized into four types: Board, Equity, Options, and Exchange committees.[5]

New Rule XXII provides a more extensive description of the powers and duties of members of the committees set forth in Article IV, and provides for the powers and duties of the Board, Equity, Options [6], and Exchange committees. The PSE proposes to add two new committees, as set forth in proposed new Rule XXII, which do not currently exist. In this regard, Rule XXII provides for an ongoing Membership Committee which the PSE notes is now required as a result of changes in membership composition and/or outmoded policies or rules regarding membership. Similarly, Rule XXII provides for a Market Performance Committee, which the PSE notes will replace the Quality of Markets Committee, to review specialists' and market makers' performance, oversee the evaluation process, and review capitalization of PSE members. The Market Performance Committee is intended to replace the Quality of Markets Committee as a more active Board Committee reviewing the overall regulation of specialists and market makers on the Exchange.[7]

New Rule XXII will set forth formalized procedures for selection and approval of committee members [8], as well as establish and set forth the appeals procedure to be followed by a member wishing to appeal the decision or action of a committee to the Board Appeals Committee.[9] In addition, all committees under the proposed rule are governed by a conflict of interest provision which prevents Board committee members from participating in matters in which they are directly or indirectly interested.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[10] and the rules and regulations thereunder. By modernizing the provisions in the PSE Constitution relating to committees and formalizing the PSE's rules and procedures with respect to the powers and duties of committee members, the process for selection of committee members, and the procedures to be followed by a member who wishes to appeal the decision or action of a committee to the Board Appeals Committee, the proposed amendments are consistent with the requirements of section 6(b)(3), which requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. The amendments are also consistent with section 6(b)(5) of the Act, which requires the rules of an Exchange be designed "to promote just and equitable principles of trade, [and] to foster cooperation and coordination with persons engaged in regulating * * * and facilitating transactions in securities, * * *" The last time Article IV of the PSE Constitution was reviewed was in 1982. Since that time additional committees have been appointed, and three committees listed in the Constitution no longer exist. The proposed amendments will update Article IV to reflect more accurately the Exchange's committees as they operate today. In addition, new Rule XXII will provide members with a detailed description of the procedures for a member to appeal the decision or action of a committee to the Board Appeals Committee.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

Dated: June 1, 1989.

[FR Doc. 89-13521 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

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[4] *See* Securities Exchange Act Release No. 26359, 53 FR 51611.

[5] Proposed new Rule XXII provides for a Market Performance Committee, a Specialist Committee, an Audit Committee, a Board Appeals Committee, and Technology Services Committee under the heading of Board Committees; a National Market System Advisory Committee, a Listing Committee and a Marketing Committee under the heading of Equity Committees; an Options Appointment Committee and a Marketing Committee under the heading of Options Committees; and a Pension Committee, a Membership Committee and a New Products Committee under the heading of Exchange Committees.

[6] Subsequent to the submission of the Exchange's proposed rule change, the Exchange revised the language in Rule XXII, Sec. 10(a) to provide that "the Options Appointment Committee shall be comprised of Floor Brokers and at least one office and/or office allied member" rather than require that this Committee consist of floor brokers only, as originally proposed. *See* letter from Craig R. Carberry, Director, Options Compliance, PSE to Sharon Itkin, Staff Attorney, Commission, dated May 11, 1989. The broader representation on the Options Appointment Committee is consistent with section 6(b)(3) of the Act in that it will "assure a fair representation of [Exchange] members in the * * * administration of its affairs."

[7] In a conversation on February 1, 1989 between Sharon Itkin, staff attorney, Commission, and John Katovich, Vice President, General Counsel and Corporate Secretary, PSE, the Exchange noted that the Quality of Markets Committee is a special committee which the PSE established to look at very specific and limited issues regarding specialists. In this regard, the Exchange noted that this Committee has been relatively inactive, meeting only a few times a year to review compliance and surveillance at the Exchange, and to review the PSE's regulatory department in general.

[8] *See* Rule XXII, Sections 1(a), (b) and (c), and 6(a) and (b).

[9] *See* Rule XXII, Section 7(a)–(n) regarding Hearings and Review of Committee Action.

[10] 15 U.S.C. 78f (1982).

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 C.F.R. 200.30-3(a)(12) (1988).

[34-26872; PHLXDEP-89-02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Enhancement to PHILANET and Request for Permanent Approval

May 30, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1989, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Depository Trust Company ("PHILADEP") hereby submits as a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Act") certain enhancements to its PHILANET Terminal Communication System ("PTCS") and requests the Commission to authorize PTCS to operate on a permanent basis.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 30, 1983, the Commission approved SR–PHILADEP–83–03 establishing PHILADEP's PTCS on a pilot basis.[1] PTCS is an electronic communication system linking PHILADEP to its participants. The basic functions offered through this system as well as those offered through similar systems operated by the Depository Trust Company ("DTC") and the Midwest Securities Trust Company ("MSTC") are well documented in the 1983 Approval Order. In particular, the Commission stated in that Order that it "expects DTC, MSTC/MCC and PHILADEP to continue to adapt their systems to meet participant demand for additional uses, including interfaced clearing agency services." Consistent with this mandate, PHILADEP has implemented a number of system enhancements to PTCS which are detailed in Exhibit 2 attached hereto.

The 1983 Approval Order recognized DTC and MCC/MSTC's systems as permanent systems whereas PHILADEP's system was approved on a pilot basis due to its more recent implementation. At the time of the Order, the Commission noted that the permanently implemented systems both required participants usage on dedicated lines for access while PHILADEP's pilot system would permit access through dial-up lines.[2] In this regard, the Commission, while noting that PTCS employs many safeguards, requested PHILADEP's management to specifically assess the risk of unauthorized access through dial-up lines. Pursuant to this directive, PHILADEP's management has and will continue to evaluate the efficacy of access to PTCS through dial-up lines.

PHILADEP believes that system access through dial-up lines, with appropriate safeguards, provides an economical alternative to the use of dedicated telephone lines and thereby promotes system access to a greater number of clearing participants, particularly those having smaller-volume. PHILADEP notes that this position is consistent with the Commission's approval of dial-up line access to MCC/MSTC's system [3] and to The Options Clearing Corporation's ("OCC") on-line communication system.[4]

PHILADEP believes that dial-up access to PTCS currently provides sufficient safeguards to ensure system integrity against unauthorized access. One enhancement to the system is an "automated password expiration" procedure. In order to further assure secure access to the system, users' passwords will be automatically changed monthly although users have the ability to change their passwords at any time.

The six year experience under the pilot and the recent system enhancements reflect the maturing of PTCS into a full service system applauded by all participant users. With the current security safeguards in place, PHILADEP has not experienced any problems or instance of unauthorized system access. In light of the above, PHILADEP believes that it is appropriate for the Commission to authorize PTCS to be implemented on a permanent basis at this time.

The proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it enhances PHILADEP's "capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible." The proposal is also consistent with the Congressional objectives of facilitating the development of a national system for clearance and settlement of securities transactions. In particular, the proposal represents "[n]ew data processing and communications techniques [that] create the opportunity for more efficient, effective and safe procedures for clearance and settlement." *See* Section 17A(a)(1)(C) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at PHILADEP. All submissions should refer to File number Philadep–89–02 and should be submitted by June 28, 1989.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–13522 Filed 6–6–89; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 20519 (December 30, 1983) (approving SR–PHILADEP–83–03, filed on February 11, 1983) ("1983 Approval Order").

[2] Dial-up access is an option as PHILADEP permits any user to access the system through dedicated lines as well.

[3] *See* Securities Exchange Act Release No. 21227 (August 9, 1984).

[4] *See* Securities Exchange Act Release No. 22939 (February 24, 1986).

[Release No. 34-26879; File No. SR-Phlx-89-22]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Preferential Allocation of CIP Exercise Notices

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") proposes to amend Rule 1009B governing Allocation of CIP Exercise Notices to provide a procedure for preferred allocation of such notices. Accordingly, the current text of Rule 1009B is to be completely rescinded and replaced with the following, all of which is new material:

Preferred Allocation of CIP Exercise Notices

Rule 1009B. (a) A holder of a short CIP position (seller of a CIP) desiring to receive priority consideration in being assigned an exercise notice of a holder of a long CIP position (purchaser of a CIP) may on a daily basis provide notice of such intent ("Notice") on or before a time specified and made public by the Exchange and which is in accordance with the Rules of the Options Clearing Corporation ("OCC"). Specific "acceptance of Notice" cut-off times will also be delineated for Exchange member organizations. A Notice may be tendered to the OCC in a form prescribed by the Exchange which is in accordance with the Rules of the OCC only by the clearing member in whose account with the OCC the CIP short position is carried. Members and member organizations shall establish fixed procedures, to the extent that they do not conflict with the rules and policies of the Exchange and the OCC, as to the latest hour at which they will accept Notices from their customers.

(b) A seller of a CIP who makes an effective tender of a Notice will receive priority consideration from the OCC in being assigned an exercise notice of a purchaser of a CIP. In the event that there are greater short CIP positions for which Notices are received than long CIP positions for which exercise notices are received, the OCC will allocate exercise notices on a random basis among only short CIP positions for which Notices have been received. In this regard, all Notices, regardless of the time of day that they are received, so long as they are received by the OCC prior to the acceptance of Notice cut-off time, will be given equal priority in being considered for assignment of exercise notices. A Notice is effective for only the business day on which it is tendered and accepted. Notices may be tendered on any day that the OCC accepts notices of exercise of the CIP cash-out privilege from CIP purchasers.

(c) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in CIPs in such member organization's customers' accounts. Such allocation procedures shall assure that customers who effectively tender Notices shall receive priority consideration and assignment of exercise notices over other customers holding CIP short positions with the member organization. In allocating exercise notices among customers of the same status holding short CIP positions, *i.e.*, those who tendered effective Notices and those who did not, such allocations shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for CIPs.

(d) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(e) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

On February 26, 1988, the PHLX submitted SR-PHLX-88-07 to the Commission establishing proposed rules for the trading of Cash Index Participations ("CIPs"). The initial rule filing established a "cash-out privilege" available to CIP purchasers to receive once each quarter a payment in cash based upon the value of the component stocks of an underlying CIP stock index at a specified point in time. SR-PHLX-88-07 was subsequently amended three times. In the second amendment, filed with the Commission on September 23, 1988, the PHLX amended the cash-out privilege to provide CIP purchasers the ability to exercise the cash-out privilege on a daily basis rather than just on a quarterly basis. The amendment also provided that those exercising the cash-out privilege on a daily basis would receive the pertinent CIP index value less one half of one percent of that value as calculated at the close of trading one business day following the date on which the cash-out privilege is exercised. With respect to quarterly exercises of the cash-out privilege, no modification was made to the initial filing. Accordingly, those exercising the cash-out privilege at the end of a quarter will receive the full CIP index value based on the next business day's opening stock prices.

Rule 1009B sets forth the procedures for determining which sellers of CIPs will be assigned and thereby become obliged to pay the cash index value to any purchaser exercising the cash-out privilege. The Rule, as currently in effect, generally provides for a random assignment to CIP sellers to CIP purchasers' exercise notices. Because certain CIP sellers may prefer not to be assigned such exercise notices at a time

when other CIP sellers may prefer to be so assigned, the proposed rule change will provide a mechanism to reflect such CIP seller preferences in the assignment procedures.

Pursuant to the proposal, a CIP seller who prefers to be given priority consideration in being assigned a CIP purchaser's exercise notice must tender a notice of such perference on each day he or she desires such priority consideration. In this regard, all notices, regardless of the time of day that they are received, so long as they are received by the Options Clearing Corporation ("OCC") for that day, will be given equal priority consideration.

The OCC has indicated that it has made the necessary technical system changes to accommodate the PHLX's proposal.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, with section 6(b)(5) of the Act, which in pertinent part requires that exchange rules "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities."

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13523 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. PA-11]

Privacy Act of 1974; Modification of Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of consolidation of the descriptions of existing systems of enforcement records and clarification of existing routine uses for such records.

SUMMARY: The Commission has consolidated preexisting descriptions of its enforcement-related systems of records. The Commission has also clarified its routine uses with respect to the consolidated system of records by adding language that explicity covers disclosure of records to trustees in bankruptcy, in litigation in which the Commission is not a party, and to foreign governmental authorities, including foreign securities authorities.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Senior Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974 (the "Act"), 5 U.S.C. 552a, the Commission had designated more than twenty enforcement-related systems of records. These systems of record are maintained by the Division of Enforcement, the Commission's Records Officer, and the Commission's Regional and Branch Offices. The descriptions of these systems of records were distinguished primarily by the status of a matter (e.g., as a matter under inquiry, formal investigation, closed investigation, or by various types of litigation) or by physical location of the records. However, for Privacy Act and other purposes, both the Commission and the public normally treat Commission enforcement-related systems of records as a single system. For example, individuals who seek to determine whether the Commission maintains information concerning them in its enforcement records generally do not frame their requests in terms of the status of a matter or the location of the records, nor does the Commission's Privacy Act Officer use these categories in responding to requests. The Commission thus determined that it was appropriate to consolidate these descriptions.[1] The consolidated description does not expand the categories of investigatory or litigation records maintained, the categories of individuals on whom such records are maintained, or the potential recipients of such information.

The consolidation of enforcement records is not intended to expand the routine uses that may be made of

[1] As a result of this consolidation, the descriptions of the following systems of records have been revoked: SEC-12—Administrative Proceedings; SEC-24—Division of Enforcement Investigative Working Files; SEC-25—Division of Enforcement Liaison Working Files; SEC-26—Division of Enforcement Preliminary Market Surveillance Inquiries; SEC-36—Investigatory Files; SEC-38—Litigation Files (Civil and Criminal); SEC-62—Atlanta Regional Office Investigative files; SEC-63—Boston Regional Office Investigation Index File; SEC-64—Boston Regional Office Investigative Files; SEC-66—Chicago Regional Office Investigative Files; SEC-71—Denver Regional Office Investigative Files; SEC-76—Detroit Branch Office Investigative Files; SEC-79—Forth Worth Regional Office Investigative Files; SEC-80—Houston Branch Office Investigative Files; SEC-82—Los Angeles Regional Office Investigative Files; SEC-85—Miami Branch Office Investigative Files; SEC-87—New York Regional Office Investigative Files; SEC-90—Philadelphia Branch Office Investigative Files; SEC-93—Salt Lake City Branch Office Investigative Files; SEC-94—San Francisco Branch Office Investigative Files; SEC-97—Washington Regional Office Investigative Files; and SEC-99—Washington Regional Office and Philadelphia Office Litigation Files.

records under previously-published system descriptions, and existing routine uses for records contained in enforcement-related systems of records continue to apply. The Commission has also clarified those uses by adding language that explicitly covers disclosure of records to trustees in bankruptcy, in litigation in which the Commission is not a party, and to foreign governmental authorities and foriegn securities authorities.

The Commission has a statutory advisory role in proceedings under the Bankruptcy Code, *see* 11 U.S.C. 1109(a); in meeting its obligations under the Bankruptcy Code, the Commission occasionally provides information that is subject to the Act to bankruptcy trustees. Similarly, the Commission is often required to disclose information subject to the Act in response to subpoenas issued in litigation to which the Commission is not a party. Disclosure under these circumstances is covered by one or more existing routine uses. The language added by newly-added Routine Uses 21 and 22 makes that coverage explicit.

The Commission also provides assistance to foreign governmental authorities under several existing routine uses. The Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677, provides explicitly for investigatory assistance to foreign authorities. In addition, it amends the Securities Exchange Act of 1934 by adding a new section 3(a)(50), which defines the term "foreign securities authority" as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters." To clarify that assistance may be provided in appropriate cases to foreign governmental authorities, and, specifically, to foreign securities authorities, the Commission is amending existing Routine Uses 1, 2, 3, 5, 6, 8, 9 and 11, either by adding specific references to foreign securities authorities, or by making other amendments as appropriate.

SEC–102

SYSTEM NAME:

Enforcement Files.

SYSTEM LOCATION:

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Files may be maintained in Commission offices which conducted an investigation or litigation. Closed investigatory and litigation files are stored at a federal records center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons who have been involved in Commission investigations or litigation, or in activities which violated or may have violated federal, state or foreign laws relating to transactions in securities, the conduct of securities business or investment advisory activities, and banking or other financial activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relevant to the matter, internal staff memoranda, Commission Minutes and Commission Orders, copies of subpoenas issued in the course of the matter, affidavits, transcripts of testimony and exhibits thereto, copies of pleadings and exhibits in related private or governmental actions, documents and other evidence obtained in the course of the matter, computerized records, working papers of the staff and other documents and records relating to the matter, opening reports, progress reports and closing reports, and miscellaneous records relating to investigations or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 15, United States Code, Sections 77s, 77t, 78u, 79r, 77uuu, 80a–41, 80b–9, and 17 CFR 202.5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. To coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self-regulatory organizations, and foreign securities authorities.

2. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

3. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, or local, a foreign governmental authority or foreign securities authority, or a securities self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

5. To a federal, state, local or foreign governmental authority or foreign securities authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

6. To a federal, state, local or foreign governmental authority or foreign securities authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. In connection with proceedings by the Commission pursuant to Rule 2(e) of its Rules of Practice, 17 CFR 201.2(e).

8. When considered appropriate, records in this system may be disclosed to a bar association, the American Institute of Certified Public Accountants, a state accountancy board or other federal, state, local or foreign licensing or oversight authority, foreign securities authority, or professional association or self-regulatory authority performing similar functions, for possible disciplinary or other action.

9. In connection with investigations or disciplinary proceedings by a state securities regulatory authority, a foreign securities authority, or by a self-regulatory organization involving one or more of its members.

10. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies, and to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific

individuals for personnel research or other personnel management functions.

11. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, regulatory law enforcement agencies of a foreign government, or foreign securities authorities.

12. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)) or the Commission's Rules of Practice, 17 CFR 202.1 et seq., or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice.

13. To any person during the course of any inquiry or investigation conducted by the Commission's staff, or in connection with civil litigation, if the staff has reason to believe that the peson to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

14. To any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

15. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)).

16. To members of advisory committees that are created by the Commission or by the Congress to render advice and recommendations to the Commission or to the Congress, to be used solely in connection with their official designated functions.

17. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.785–1 et seq., and who assists in the investigation by the Commission of possible violations of federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

18. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

19. To respond to inquiries from Members of Congress, the press and the public which relate to specific matters that the Commission has investigated and to matters under the Commission's jurisdiction.

20. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78u(a), as amended.

21. To respond to subpoenas in any litigation or other proceeding.

22. To a trustee in bankruptcy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microform, electronic and other media.

RETRIEVABILITY:

The records are retrieved by the name under which the investigation is conducted or administrative or judicial litigation is filed. Access to information about an individual may be obtained through the Commission's Name-Relationship Index system by the name of the individual. Information concerning an individual may also be obtained by reference to card or computer-maintained indices.

SAFEGUARDS:

Access to and use of investigatory records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are maintained in buildings having a 24-hour security guard. During the course of a matter, relevant records are normally maintained by the individuals working on the matter. Information contained in indices is safeguarded by use of confidential access passwords, physical restrictions and/or other means. Most of the information contained in litigation files is public insofar as the documents were filed in public administrative proceedings or litigation (unless otherwise ordered).

RETENTION AND DISPOSAL:

Records are retained in the Commission's files while in use. Records of investigations are generally maintained until the case has been closed, at which time materials are destroyed, returned to owners, or transferred to the Federal Records Center for storage, as appropriate. Records sent to the Federal Records Center are retained in accordance with Commisson guidelines.

SYSTEMS MANAGERS AND ADDRESSES:

Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; Records Officer, 450 Fifth Street, NW., Washington, DC 20549; Regional Administrator, Atlanta Regional Office, 1375 Peachtree Street, Suite 788, NE., Atlanta, GA 30367; Associate Regional Administration, Miami Branch Office, Dupont Plaza Center, 300 Biscayne Blvd. Way, Suite 500, Miami, FL 33131; Regional Administrator, Boston Regional Office, John W. McCormack Post Office and Courthouse Building, 90 Devonshire Street, Boston, Suite 700, MA 02109; Regional Administrator, Chicago Regional Office, Room 1204, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604; Regional Administrator, Denver Regional Office, 410 Seventeenth Street, Suite 700, Denver, CO 80202; Assistant Regional Administrator, Salt Lake Branch Office, U.S. Post Office and Court House, 350 S. Main Street, Room 505, Salt Lake City, UT 84101; Regional Administrator, Fort Worth Regional Office, 8th Floor, 411 West Seventh Street, Fort Worth, TX 76102; Assistant Regional Administrator, Houston Branch Office, Suite 550, 7500 San Felipe Street, Houston, TX 77063; Regional Administrator, Los Angeles Regional Office, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, CA 90036–3648; Associate Regional Administrator, San Francisco Branch Office, 901 Market

Street, Suite 470, San Francisco, CA 94103; Regional Administrator, New York Regional Office, 26 Federal Plaza, Room 1028, New York, NY 10278; Regional Administrator, Philadelphia Regional Office, Federal Building, Room 2204, 600 Arch Street, Philadelphia, PA 19106; Regional Administrator, Seattle Regional Office, 3040 Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174.

NOTIFICATION PROCEDURE:

Any request to determine whether this system of records contains a record pertaining to the requesting individual may be made in person during normal business hours at the SEC Public Reference Branch at 450 Fifth Street, NW., Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549.

RECORD ACCESS PROCEDURES:

See Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should direct their requests to the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, banks, corporations, or other entities; self-regulatory organizations; the Postal Inspection Service, the Department of Justice, state securities commissions, other Federal, state, or local bodies and law enforcement agencies or foreign governmental authorities, including foreign securities authorities; public sources, i.e., libraries, newspapers, television, radio, court records, filings with Federal, state, and local bodies; filings made with the SEC pursuant to law; electronic information sources; other offices within the Commission; documents, litigation, transcripts of testimony, evidence introduced into court, orders entered by a court and correspondence relating to litigation; pleadings in administrative proceedings, transcripts of testimony, documents, including evidence entered in such proceedings, and correspondence relating to the proceedings; and miscellaneous other sources.

By the Commission.

Jonathan G. Katz.

Secretary.

Date: May 30, 1989.

[FR Doc. 89-13524 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16978, 812-7296]

Bear, Stearns & Co. Inc.; Application

May 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bear, Stearns & Co. Inc. ("Bear Stearns" or the "Applicant"), on behalf of Municipal Securities Trust, High Income Series (the "Trust").

Relevant Sections of the 1940 Act: Exemption requested under section 17(b) from the provisions of section 17(a) and under section 45(a) of the 1940 Act.

Summary of the Application: The Applicant seeks an order permitting it as sponsor of the Trust to purchase certain specified securities (the "Bonds") from the Trust and for an order granting confidential treatment for certain information made a part of the application regarding the Bonds.

Filing Date: The application was filed on April 13, 1989, and amendments to the application were filed on May 19 and 30, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Michael R. Rosella, Esq., Battle Fowler, 280 Park Avenue, New York, New York 10117.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-43000).

Applicant's Representations

1. The Trust is an investment company registered under the 1940 Act that is sponsored by the Applicant whose units ("Units") are registered under the Securities Act of 1933, as amended (the "1933 Act"). The Trust was formed to provide a high level of interest income (including earned original issue discount) by investing in a fixed, diversified portfolio of long-term tax-exempt bonds.

2. Bonds such as those included in the Trust which generate high levels of interest income are, under most circumstances, subject to greater market fluctuations and risk of loss of income and principal (credit risk) than are investments in lower yielding bonds. Any such fluctuations will affect the value of the portfolio and the Units. Some of the bonds in the Trust are not rated by any national rating organization and the market for such bonds may not be as broad as the amrket for rated bonds.

3. The Trust has invested in bonds which were purchased on a privately negotiated basis. The Bonds in question were purchased for the Trust in the privately negotiated bond market. The terms of such bonds usually are negotiated between the issuer of the bonds and the purchasers. These types of bonds usually are issued to a small number of institutional investors in smaller dollar amounts than publicly traded bonds and are infrequently traded because there are fewer bonds available in the marketplace. As a result, the market for such bonds is not extensive because the terms of the instruments may reflect the particular and individualized needs of the original purchasers. In addition, there are fewer dealers making a market in these bonds because it is impractical for most dealers to allocate resources to follow issues structured by other underwriters. Therefore, there may not be a readily available market for such bonds if the Trust decides to sell them from the portfolio. The limited and specialized secondary market maintained by the original underwriter is generally the only market available for resales of these bonds.

Applicant's Legal Analysis

I. Section 17(b)

The Applicant is concerned that if a portfolio security is being disposed of by the Trust for credit reasons, the Applicant's exclusion from the market of dealers bidding for the security may be detrimental to the Trust and its Unit holders. To preclude Bear Stearns from

bidding for the portfolio security in this specialized market may prevent the Trust from getting the "best price" in the market or force the Trust to retain the security where the Applicant is the only prospective bidder for the Bonds. Neither consequence will be in the best interest of the Unit holders nor in furtherance of the policies of the 1940 Act. The inability of the Trust to sell the Bonds to Bear Stearns in these circumstances at a price at least equal to the Bonds' current value would be detrimental to Unit holders and not in furtherance of the 1940 Act or consistent with the 1940 Act's enunciated goal of protecting investors. Such may either (1) force the Trust to retain the Bonds under circumstances when the retention of such security would not be in the best interest of the Unit holders or (2) force the Trust to sell the Bonds at a price lower than the best available price in the marketplace. The application seeks an exemption from section 17(a) which would permit Bear Stearns, the sponsor of the Trust, to purchase these privately negotiated Bonds according to the terms of the application.

II. Section 45(a)

1. It is submitted that disclosure of the information regarding the Bonds is neither necessary nor appropriate in the public interest or for the protection of investors. The Unit holders of the Trust will be informed of the sale of the Bonds by the trustee ("Trustee") pursuant to the terms of the Trust indenture. Therefore, disclosure of this information will not further any interest of the Unit holders.

2. It is also submitted that no other public interest would be furthered by the disclosure of this information. While it is important for the SEC to review this information, public disclosure of this information would be inappropriate. The information regarding the Bonds has been obtained at the expense of the Bear Stearns and, therefore, should be considered its own proprietary information. By public disclosure, other investors and potential investors will unfairly gain the benefit of this proprietary information belonging to Bear Stearns.

3. The Bonds are being sold by the Trust because their credit quality is no longer consisent with the Trust's credit quality standards. This credit quality determination may not be applicable or appropriate for holders with different investment objectives from those of the Trust. As a significant market maker in these privately negotiated Bonds, Bear Stearns is concerned that public disclosure of this information may have an adverse effect on the value of both the Bonds and privately negotiated bonds generally.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following:

1. *Best Price.* Before executing any sale of the privately negotiated Bonds to Bear Stearns, the particular Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and in doing so, the Trustee will be required to advertise the bond on national muncipal bond broker wire services to obtain competitive bids. In each instance where other bids are obtained, a determination will be required, based upon the information available to the Trustee, that the price bid by the Applicant is "better than" the best price bid by the other sources in order for the Trustee to effect the sale with the Applicant. To be considered "better than" that available from other sources, Applicant's bid must be at least a standard minimum price increment (i.e., at least ⅛ of 1% of principal amount or $1.25 per $1,000 principal amount) better than the best bid from other sources. The Trustee will maintain records with respect to any transactions effected with the Applicant where the Applicant quotes the "best price" to the Trust, including documentation for having obtained bids from other dealers.

2. *Fair Price.* Before effecting a sale to the Applicant where it is only bidder and where there are no other bids available, the Trustee will be required to determine whether such price is a "fair price". Determining whether a price is a "fair price", the Trustee may consider, to the extent possible, price quotations for privately placed securities of comparable maturity and credit quality from dealers who are not making a market in this particular security but are actively engaged in the market making of privately negotiated bonds of the type in question and any other criteria it deems appropriate (e.g., appraisal of the underlying collateral or the net operating income of the project in question). Where appropriate, the factors the Trustee will examine in making the determination that securities are of "comparable maturity and quality" include, but are not limited to, (1) the respective current and projected earnings of the obligors, (2) the balance sheets or financial conditions of the respective obligors, (3) the industry outlooks for respective obligors, (4) the management of the respective obligors, (5) debt service coverage of the respective obligors, (6) securities of comparable yield, (7) securities with comparable credit characteristics, and (8) securities of comparable maturity. The Trustee will maintain records with respect to any transactions effected with Bear Stearns, where Bear Stearns quotes the only price, and a "fair price", to the Trust, including documentation for having obtained bids from other dealers of comparable securities and any appraisals or records regarding the underlying collateral or obligors.

3. *Previous Institutional Repurchases.* Where the Applicant has repurchased a portion of the Bonds in question from other institutional holders within 30 days of the time the Trust makes its sale of the Bond, the price at which the Trust sells the Bond to Bear Stearns will not be less than the highest price paid to any such institutional holder. (This procedure offers further indication that the price at which Bear Stearns would purchase such Bonds is a "fair price" since other independent institutional investors will make judgments that the repurchase price is fair based upon their own arm's-length analysis.)

4. *Remittance of Future Profit.* Bear Stearns undertakes and represents that any net profit from future resale of the Bonds, liquidation of underlying collateral or recovery from litigation involving the Bonds would be paid to the Trust from which it was purchased (the Trust's pro rata portion of the amount ultimately realized by Bear Stearns less (i) the price previously paid to the Trust and (ii) the pro rata amount of the out-of-pocket costs incurred in connection with such realization including, real estate brokers' fees, selling expenses, outstanding real estate taxes and legal and other litigation related expenses), thus eliminating the profit possibility from any self-dealing. If the Trust has been completely liquidated at the time of this realization, the net profit will be paid to the Trust's Unit holders of record who received the final liquidating distribution from the Trust.

5. *Departmental Independence.* While the determination that the Bonds should be sold from the Trust was made by the Applicant as sponsor, the personnel of Bear Stearns making this decision are not the same personnel that are involved in the underwriting and market making of privately placed municipal securities. The unit investment trust department at Bear Stearns is involved in the selection and purchase of securities on the part of the Trust and has direct involvement in the administration and monitoring of the Trust. The public finance department and the municipal bond department of

Bear Stearns perform the underwriting and market making activities for municipal bonds. The decision to sell a portfolio security by the Trust originates and is made only by the unit investment trust department, although the municipal bond department may have been consulted on the evaluation of a portfolio security's investment quality. No solicitation of the Trust for the security is made by the public finance or municipal bond departments. The public finance and municipal bond departments will not attempt to influence or control in any way the placing of orders to sell the Bonds by the Trust with Bear Stearns.

6. *Segregated Records.* Bear Stearns undertakes to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth herein or otherwise referred to herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13525 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24897]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 1, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 26, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) shoulds be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric Systems ("NEES"), a registered holding company, and ten of its subsidiaries, Granite State Electric ("Granite"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), NEES Energy, Incorporated ("NEES Energy"), New England Electric Transmission Corporation ("NEET"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("Mass Hydro"), New England Hydro-Transmission Corporation ("NH Hydro"), New England Power Company ("Power Company") and New England Power Service Company ("Service Company"), all located at 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 40, 45 and 50(a)(5) thereunder.

By prior Commission order, each of the above named subsidiaries and NEES were authorized, through October 31, 1990, to lend to, and, with the exception of NEES, NEES Energy, NEEI, Mass Hydro, and NH Hydro, to borrow from the NEES money pool ("Money Pool") and/or banks, and/or, in the cases of Mass Electric and Power Company, to issue commercial paper up to the following maximum outstanding amounts: Granite—$7 million; Mass Electric—$90 million; Narragansett—$50 million; NEET—$10 million; Power Company—$300 million, and Service Company—$10 million. However, the amounts requested for Mass Electric and Narragansett were subjected to a dollar for dollar reduction for any permanent financing, which was not earmarked to refund outstanding long-term securities, to levels not below $75 million for Mass Electric and $40 million for Narragansett (HCAR No. 24733, October 21, 1988). On December 8, 1988, Mass Electric issued and sold $50 million of its First Mortgage Bonds, Series Q, pursuant to the Commission's orders dated October 9, 1987 (HCAR No. 24473) and November 29, 1988 (HCAR No. 24762). Consequently, Mass Electric's short-term borrowing authority was effectively reduced to an amount not exceeding $75 million outstanding at any one time.

Mass Electric seeks to amend the application-declaration, only to the extent that it concerns the amount of its short-term borrowing authority, by increasing its short-term borrowing authority from the current $75 million to $110 million outstanding at any one time. NEES and the other subsidiary companies propose to acquire short-term notes in the same increased amount.

The construction costs for the additions and improvements to Mass Electric's property and plant have significantly exceeded projected budgets. In 1988, Mass Electric's actual construction cost was $96 million, as opposed to a $74 million projection. Currently, the estimated construction budgets for 1989 and 1990 are approximately $100 million and $105 million, respectively, as opposed to the previous estimates of $78 million and $79 million. A further 20% increase from the estimated budgets will result in an additional funding need of more than $40 million for these two years. While long-term financing will ultimately be used to satisfy the construction funding needs, the required external funds are expected to be provided initially in the form of additional short-term borrowings.

The additional commercial paper proposed to be issued and sold by Mass Electric will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days. It is requested that the issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

For the Commission, by the Division of Investment Management purusant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13526 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the

Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Disaster Survey Worksheet
Form Number: SBA Form 987
Frequency: On Occasion
Description of Respondents: State or local governments as well as individuals in an area seeking disaster assistance.
Annual Responses: 4000
Annual Burden Hours: 333
Title: SBA Contract Requirements
Frequency: On Occasion
Description of Respondents: Vendors interested in obtaining SBA contracts
Annual Responses: 2,250
Annual Burden Hours: 112,500

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–13435 Filed 6–6–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 06/06–0299]

First City, Texas Ventures, Inc.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661. et seq.) has been filed by First City, Texas Ventures, Inc., 1001 Main Street, Suite 1550, Houston, Texas 77002, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
J.R. Brlansky, 3908 Rice St., Houston, TX 77005.	President, general manager and director.	
Frank C. Cihak, 11059 South Hoyne Ave., Chicago, IL 60643–4039.	Director	
Glen G. Magnuson, Jr., 2041 Westcreek Lane, #150 D, Houston, TX 77027.	Director and secretary.	
Robert W. Brown, 2011 CastleRock, Houston, TX 77090.	Director and treasurer.	
Sandy B. Ho, 7846 Breezeway, Houston, TX 77040.	Controller	
First City, Texas-Houston, N.A., 1001 Main St., Houston, TX 77002.		100

First City, Texas Venture, Inc. (FCTV) is a wholly-owned subsidiary of First City, Texas-Houston, N.A.

The Applicant, FCTV, a Texas Corporation, will begin operations with $2,000,000 paid-in capital and paid-in surplus. FCTV will conduct its activities primarily in the State of Texas, but will consider investments in businesses in the Southwestern United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washingotn, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 1, 1989.

[FR Doc. 89–13436 Filed 6–6–89; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02–02–5528]

J. Paul Capital, Inc.; Application To Operate as a Small Business Investment Co. Licensee

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by J. Paul Capital, Inc., 231 East 31st Street, New York, New York 10016 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title
Baldeu S. Sandhu, 231 East 31st St., New York, NY 10016.	President, director and sole shareholder.
Satuant Sandhu, 231 East 31st St., New York, NY 10016.	Secretary and director.
Divakor R. Kamath, 6 West Kincaid Dr., Cranbury, NJ 08512.	Assistant secretary, director.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: May 30, 1989.

[FR Doc. 89–13434 Filed 6–6–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-22]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 31, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 21802.
Petitioner: Sowell aviation Co., Inc.
Regulations Affected: 14 CFR 141.65.
Description of Relief Sought: To extend Exemption No. 4551, as amended, that allows petitioner to recommend graduates of its FAA-approved certification courses for airline transport pilot and flight instructor certificates and associated ratings, without taking the FAA written test, in accordance with the provisions of Subpart D of Part 141. Exemption No. 4551, as amended, will expire on November 30, 1989.

Docket No.: 25605.
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.89(b)(3).
Description of Relief Sought: To allow petitioner to operate jet aircraft between 35,000 and 41,000 feet MSL without requiring one pilot at the controls to wear an oxygen mask.

Docket No.: 25809.
Petitioner: Stapleton International Airport.
Sections of the FAR Affected: 14 CFR 107.14.
Description of Relief Sought: To allow petitioner to continue using existing security programs and equipment in place of a computer-controlled card access system.

Docket No.: 25859.
Petitioner: Air Treads.
Sections of the FAR Affected: 14 CFR 43, Appendix B, paragraph (b)(2).
Description of Relief Sought: To allow petitioner to use a Maintenance Release Tag to identify the work order number and certify the airworthiness of wheels and brakes in lieu of providing a customer with a copy of the work order as specified in Part 43, Appendix B, paragraph (b)(2).

Docket No.: 067CE.
Petitioner: Beech.
Sections of the FAR Affected: 14 CFR 23.903(b)(1).
Description of Relief Sought: To allow type certification of Beech Mode B300 airplane without showing compliance to "Design precautions must be taken to minimize the hazards to the airplane in the event of an engine rotor failure."

[FR Doc. 89-13459 Filed 6-6-89; 8:45 am]
BILLING CODE 4910-13-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Correction of Notice of Meeting

This document corrects the Notice of Meeting published in Vol. 54, No. 103, page 23560, June 1, 1989. The above referenced notice should have read as follows:

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463); 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 10:00 a.m., June 28, 1989, at The Kitchigammi Club, 831 East Superior Street, Duluth, Minnesota. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meetings; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 20, 1989, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on June 1, 1989.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 89-13431 Filed 6-6-89; 8:45 am]
BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 1, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0085
Form Number: CF 247
Type of Review: Extension
Title: Cost Submission
Description: The document is used by importers to furnish cost information to Customs which is used in the valuation of imported merchandise. It

is a guide for the importer to follow in compiling the cost elements supporting the entered values reported to Customs.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 28

Estimated Burden Hours Per Response/ Recordkeeping: 52 hours

Frequency of Response: On occasion

Estimated Total Recordkeeping/ Reporting Burden: 11,420 hours

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–13484 Filed 6–6–89; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities

The following announcement supersedes the one appearing in the Federal Register, Volume 54, Number 26 of Thursday, February 9, 1989, p. 6359.

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program whose primary purpose is to support international public diplomacy objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources by means of limited grants to non-profit U.S. institutions. The Office gives high priority to project proposals that establish or promote linkages between American and foreign professional organizations.

Projects must include an international people-to-people component, have an educational or cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and other countries. Subjects must be consistent with USIA themes and priorities and USIS post requirements.

The Office of Private Sector Programs works with U.S. non-for-profit organizations on cooperative international group projects which introduce American and foreign participants to one another's traditions, arts, social, economic and political structures, and international interests. The Office will accord priority status to worldwide projects involving leaders or potential leaders in various fields and professions, including parliamentarians, jurists, journalists, development officials, and practicing artist in projects directly involving their art (with exceptions noted below). Proposals are welcome involving any area of the world, with special attention given to excellent projects involving regions and countries which have participated less frequently in exchanges, such as Africa, Eastern Europe, the Near East, South and Southeast Asia. Each private sector activity must meet the highest professional standards, be non-partisan, and address substantive areas of mutual interest. High priority is given to projects that involve United States Information Agency posts in the development of the program and the selection of the participants.

USIA grant assistance constitutes only a portion of total project funding. Proposals should list other anticipated sources of support—both financial and in-kind. Programs generally range from one to six weeks; the duration of the entire grant period does not normally exceed one year. Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs. Grants are not ordinarily given to support performing arts tours, film festivals, plastic arts exhibitions, research projects or professional training, youth or youth-related activities, or to fund publications. Student exchanges or projects which are scholarly or academic in purpose should be directed to USIA's Office of Academic Programs. Youth or youth-related projects should be directed to USIA's Office of International Youth Exchange.

The Office of Private Sector Programs will accept proposals from July 1, 1989 through September 30, 1989, for projects whose activities will begin between January 1, 1990 and June 30, 1990. Project proposals must be received a minimum of four months in advance of the activity date and will be accepted only when they are in accord with Project Proposal Information Requirements (OMB #3118–0175). For proposed projects which begin after June 30, 1990, competition details will be announced in the Federal Register on or about October 15, 1989. Inquiries are welcome prior to submission of applications. Under compelling circumstances, the Office of Private Sector Programs will consider applications for projects beginning as early as November 1, 1989, or outside the above-mentioned timeframe.

The Office of Private Sector Programs offers the following additional guidance to prospective applicants:

1. Office of Private Sector Programs guidelines indicate that full and complete proposals must be submitted a minimum of four months prior to the start of a program. The minimum timeframe is necessary for two reasons. First, the Office's Congressional mandate is best served when U.S. private sector organizations work with and through U.S. Information Service (USIS) posts in other countries in carrying out projects with a long view toward ongoing institutional linkages between foreign and U.S. professional institutions. Projects can serve these ends only when USIS officers have reasonable time and opportunity to make contacts and lay the groundwork necessary for successful educational and cultural programming. Second, the reivew process for proposals submitted to USIA is multilayered and time-consuming. The four-month minimum timeframe stipulated between the receipt of proposals and the date of the proposed activity is just barely sufficient to make a project work to the benefit of all concerned.

2. Projects supported by the Office of Private Sector Programs are intended to support USIS posts abroad as well as to assist U.S. private sector organizations in their efforts to advance mutual understanding between the people of the United States and the people of other countries, in areas and fields identified as important for bilateral relations. While the Office welcomes and seeks clearly defined projects in the wide gamut of U.S. private sector fields and interests, it gives preferential consideration to projects which reserve the nomination of foreign participants to the discretion of USIS posts, with a long view toward ongoing institutional linkages between foreign and U.S. professional institutions. Applicants should be aware that proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and that pre-selected participants will be subject to USIS post review.

3. The Office of Private Sector Programs gives preferential consideration to proposals for activities in other countries when USIS posts are given wide latitude in matters relating to the design of the proposed program, invitations to the planned events, and choice of the most suitable venues for such programs.

4. The Office of Private Sector Programs does not encourage proposals for the partial support of conferences. The Office evaluates such proposals in the light of benefits going beyond the context of the conference itself, most importantly their potential for creating and strengthening ongoing linkages between foreign and U.S. professional organizations, and the extent to which key foreign audiences are addressed on topics of priority interest to USIA. Prospective applicants would be well-advised to call the Office to discuss possibilities and prospects long in advance of planned conference dates or to submit concept papers including tentative agendae and names of conference participants.

5. Because of limited resources, the Office of Private Sector Programs encourages project proposals involving more than one country. Single-country projects that are clearly defined and possess the potential for creating and strengthening ongoing linkages between foreign and U.S. professional institutions, and address key USIS-post audiences on topics of priority interest to USIA, are certainly welcome. Prospective applicants would be well-advised to call the Office to discuss possibilities and projects long in advance of planned activity dates or to submit concept papers including all pertinent information.

For further information, organizations should contact Christopher Paddack, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, or call (202) 485–7319.

Dated: June 1, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89–13491 Filed 6–6–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 108
Wednesday, June 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, June 20, 1989.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13604 Filed 6–5–89; 11:22 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 p.m., Tuesday, June 27, 1989.
PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Regulation of Hybrid Instruments/Final Rule.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 13605 Filed 6–5–89; 11:22 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 p.m., Tuesday, June 27, 1989.
PLACE: 2033 K St, NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13606 Filed 6–5–89; 11:22 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 p.m., Tuesday, June 27, 1989.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89–13607 Filed 6–5–89; 11:22 am]
BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 2, 1989.

TIME AND DATE: 10:00 a.m., Thursday, June 8, 1989.
PLACE: Room 600, 1730 K Street, NW., Washington, DC.
STATUS: Open.
MATTERS TO BE CONSIDERED: In addition to the previously scheduled item, the Commission will consider and act upon the following:

2. *Utah Power & Light Company v. Secretary of Labor, MSHA,* Docket No. WEST 89–161–R. (Issues include consideration of Utah Power's application for temporary relief.)

It was determined by a unanimous vote of Commissioners that this item be included in the meeting and that no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 89–13583 Filed 6–5–89; 8:45 am]
BILLING CODE 6735–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE–89–22

TIME AND DATE: Monday, June 12, 1989 at 4:00 p.m.
PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Doxorubicin and Doxorubicin Preparations (D/N 1508).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,
Secretary.
June 2, 1989.
[FR Doc. 89–13614 Filed 6–5–89; 12:14 pm]
BILLING CODE 7020–02–M

NATIONAL SCIENCE BOARD

TIME AND DATE:

June 15, 1989, 8:30 a.m. Open Session
June 16, 1989, 8:00 a.m. Closed Session
June 16, 1989, 8:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 15, 1989

Open Session (8:30 a.m. to 12:30 p.m.)

1. Overview
   —NSF's Changing Role
   —Policy Environment
   —Priorities
   —Issues
2. Strategic Plan Review
   —Goals
   —Update
   —Projections
   —Agency Relationships
3. Human Resources development
   —Education
   —Minorities
   —Women
   —Undergraduate
   —Graduate Programs

Thursday, June 15, 1989

Open Session (1:30 p.m. to 5:30 p.m.)

4. Research Opportunities
   —Base Programs and Disciplinary Role
   —Centers
   —International Science Sharing
5. Roundtable: Research Frontiers
   —Global Environmental Change
   —Materials Science and Engineering
   —Math, Astronomy, Physics Programs
   —Computational Science and Engineering
   —Human Genome
6. Physical Infrastructure Requirements
   —Instrumentation
   —Capital Planning
   —Research Facilities

Friday, June 16, 1989

Closed Session (8:00–8:15 a.m.)

7. Minutes—May 1989 Meeting
8. NSB Nominees

9. Grants and Contracts

Friday, June 16, 1989

Open Session (8:15 to 12:00 noon) and 1:00 p.m. to 3:00 p.m.

10. NSB Biennial Report—Science and Engineering Indicators-1989
11. Budget Consideration
—Budget History
—Budget Outlook
—1991 Budget Assumption
12. Summary and Conclusion

Thomas Ubois,

Executive Officer.

[FR Doc. 89–13572 Filed 6–5–89; 8:45 am]

BILLING CODE 7555-01-M

federal register

Wednesday
June 7, 1989

Part II

Nuclear Regulatory Commission

10 CFR Parts 2 and 26

Fitness-For-Duty Programs; Final Rule and Statement of Policy

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 26

RIN: 3150-AC81

Fitness-for-Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule and statement of policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing its regulations to require licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. The general objective of this program is to provide reasonable assurance that nuclear power plant personnel are reliable, trustworthy, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties. A fitness-for-duty program developed under the requirements of this rule is intended to create an environment which is free of drugs and the effects of such substances.

The Commission is taking this action to significantly increase assurance of public health and safety. The scientific evidence is conclusive that significant decrements in cognitive and physical task performance result from intoxication due to illicit drug abuse, as well as the use and misuse of legal substances. Given the addictive and impairing nature of certain drugs, while recognizing that the presence of drug metabolites does not necessarily relate directly to a current impaired state, the presence of drugs does strongly suggest the likelihood of past, present, or future impairment affecting job activities. In addition, the NRC believes that the reliability, integrity, and trustworthiness of persons working within nuclear power plants is important to assure public health and safety. Since there is an underlying assumption that workers will abide by the licensee's policies and procedures, any involvement with illegal drugs shows that the worker cannot be relied upon to obey laws of a health and safety nature, indicating that the individual may not scrupulously follow rigorous procedural requirements with the integrity required in the nuclear power industry to assure public health and safety. In addition, the Commission is revising its enforcement policy to reflect this fitness-for-duty rule.

EFFECTIVE DATE: July 7, 1989. The information collection requirements in this final rule do not become effective until they are approved by the Office of Management and Budget (OMB). The NRC will announce the date that the information collection requirements are approved in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Loren Bush, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0944.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1988, the Nuclear Regulatory Commission published in the Federal Register (53 FR 36795) proposed amendments that would issue a new regulation 10 CFR Part 26, "Fitness-for-Duty Program," which would require licensees who are authorized to operate nuclear power reactors to implement a fitness-for-duty program that met uniform standards established by the rule to promote the public health and safety.

Interested parties were invited to submit comments in connection with the proposed amendments within 60 days after publication in the Federal Register. There were a total of 3,079 comments made by 378 responders and attendees during a public meeting held on October 17, 1988. A detailed summary and analysis of the comments are contained in NUREG-1354, "Fitness-for-Duty in the Nuclear Power Industry: Responses to Public Comments." Upon consideration of the comments received both in writing and during the public meeting and other factors involved, the Nuclear Regulatory Commission has adopted the proposed regulations, with certain modifications generally set forth below.

Copies of NUREG-1354 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., lower level of the Gelman Building, Washington, DC.

Comments and Responses to the Proposed Rule

1.0 General Overview

Summary of Comments

The NRC received 378 comment letters in response to the Notice of Proposed Rulemaking (NPRM). The NRC considered all comments submitted in a timely manner in response to the NPRM and comments and questions received during a public meeting on the draft rule held by the NRC. The comment period for the NPRM closed on November 21, 1988.

Comments were received from the general public; from workers in nuclear power plants; from union locals, national and international headquarters of unions; from the Nuclear Management and Resources Council (NUMARC), 55 power reactor licensees, several non-power reactor licensees; from several vendor and contractor organizations; and from other interested parties.

There were several major issues presented by the commenters. These are summarized along with the NRC responses in the sections that follow. An overview of these comments is provided in this section.

Of primary concern to roughly half of all commenters was the requirement for random drug testing. Although these commenters clearly objected to the use of illegal drugs within the nuclear power industry, this provision of the proposed rule drew a strong negative reaction from private citizens, labor unions, and workers covered by the proposed rule. Vigorous objections were stated based on the perceptions of invasion of privacy and conflict with Constitutional rights resulting from the drug testing provision. Many of these commenters stressed that the level of substance abuse in the nuclear power industry is insufficient to justify such strong action, that nuclear power plant workers have demonstrated their reliability over the years, and that it is both demoralizing and insulting to require proof of their reliability through random drug tests. Other issues were raised concerning the legality of the proposed rule, including its relationship to labor laws and state and local statutes. These objections are summarized more fully in the following sections.

Those commenters opposing random testing were usually supportive of one or more alternatives. Foremost among these was a combination of supervisor behavioral observation and for-cause testing. While a few commenters opposed chemical testing of any type, most of the commenters, including union organizations and members, expressed support for for-cause testing. Preaccess authorization testing also received some support and very little opposition.

A major criticism of the proposed rule was raised concerning whether the NRC was basing the rule on concerns about on-the-job impairment or on concerns

about basic employee reliability, or even upon more general concerns with public morality. Some commenters expressed the opinion that off-site drug use should not be a concern of the NRC, and that the NRC should not require a testing program that is not directly oriented to detecting current impairment.

In contrast, most licensees and NUMARC provided general support for the provision for random testing, viewing it as an effective deterrent to the use of illegal drugs. However, they did object to the possibility that they would be too severely limited by the provision that licensee testing programs must follow the HHS Guidelines. They wanted greater flexibility in the establishment of cut-off levels and the panel of drugs to be covered. Most of the licensees expressed concern over the testing rate to be required by the rule, indicating that it should be at an annual rate equivalent to or less than 100 percent of the workforce subject to testing. They further objected to any provisions that would make the licensee responsible for providing employee assistance program services to contractor personnel and objected to the extent and type of training required by the proposed rule. Other issues raised and more detail on these issues are provided in the sections that follow.

2.0 Need for Rule

2.1 Summary of Comments

A number of commenters raised the issue that there was insufficient evidence of a drug abuse problem in the nuclear power industry to justify the need for the rule. Several commenters indicated that the NRC has failed to establish a factual record regarding the nature and extent of the drug abuse problem. Also mentioned was the opinion that the apparent lack of uniformily among nuclear utility programs is not sufficient justification by the NRC for the rule.

2.2 Summary of Responses

Although drug use among nuclear power plant workers may not be as widespread as in other segments of the population, the NRC does have information to indicate that there is a sufficient problem in the nuclear power industry to warrant the fitness-for-duty rule. For example, data provided by one licensee indicates that 47 of approximately 4,000 random tests of employees were positive, 4 percent of the applicants for employment have tested positive for drug use, and 30 employees and 60 contractors tested positive for cause. Pre-access testing of nearly 12,000 contractor personnel resulted in a 5 percent positive rate. Another licensee reported that approximately 2 percent of approximately 5,000 tests of employees and contractors were positive, 179 persons tested positive for cause, and that the drugs involved included PCP, marijuana, cocaine, amphetamines, barbiturates, alcohol and other drugs. Nationally, among licensees implementing random drug testing programs, an average of around 1 percent of the random tests are positive.

In the first nine months of 1988 there were 387 events involving drugs and alcohol reported to the NRC. These events included licensee and contractor employees in all organizational levels and disciplines. Of particular concern to the NRC is that during the last year (1988), 11 licensed reactor operators were reported as being involved with drugs and two were reported as abusing alcohol; none were using these substances while on duty.

The number of significant events reported to the NRC that involve drug use or abuse has been increasing dramatically since 1985. There was a 44 percent increase in reported events between 1985 and 1986. A 73 percent increase was experienced in 1987. This increase appears to be related to the emphasis on fitness for duty by nuclear power licensees and the recently revised safeguard reporting requirements that contained explicit guidance for reporting of drug-related events. However, the increase may also be an indication of an increase in the incidence of drug problems at nuclear power plants.

These data provide sufficient evidence of a significant level of drug use by those employed in the nuclear power industry to support the need for a fitness-for-duty rule. Pursuant to the NRC's statutory authority to protect the public health and safety, the NRC must acknowledge that nuclear power plant workers are not immune to, nor insulated from, drug use or abuse of substances that may affect safety-critical job performance. The NRC believes that any drug use in the nuclear power industry warrants prevention and proactive intervention by the NRC to ensure public safety. The NRC believes that this view is consistent with the increasing awareness of nuclear power licensees that have, as addressed in their comments, drug testing and rehabilitation programs for their workers.

3.0 Impairment vs. Reliability

3.1 Summary of Comments

A number of commenters questioned whether certain provisions of the rule, such as random drug testing, were based on concern over on-the-job impairment or were based on concern over the reliability and trustworthiness of the worker. One set of commenters expressed the strongly held belief that mandatory chemical testing is only appropriate if there is evidence to suggest that workers are impaired on the job. Commenters also stated that, because urinalysis does not measure impairment, the detection of illicit drug use through urinalysis is irrelevant to the safe operation of nuclear power plants, and thus should not be an element of the rule. Two commenters requested further evidence regarding the impact of off-the-job drug use on job performance. One commenter stated that, although a positive urinalysis test result does not establish whether an individual was impaired at the time that the sample was given, it allows the employer to determine drug use and conclude reasonably that the possibility exists for future impairment which can impact workplace safety.

Other commenters noted that impairment is not the sole issue. A fundamental concern of drug abuse predominantly relates to the reliability and trustworthiness of the worker who knowingly uses drugs which are illegal. Several commenters, including NUMARC, noted the importance of worker reliability and trustworthiness in an access authorization program, and stated that the use of illegal drugs on or off the job could adversely affect the safety of nuclear power plant operations, or adversely reflect on the integrity, reliability and trustworthiness of workers with unescorted access who are responsible for nuclear power plant safety.

A number of commenters objected to specific wording in the proposed rule related to impairment. These commenters stated that the term "impairment" is imprecise and subject to various interpretations. Another commenter stated that few nuclear power plant workers are qualified to make a judgment of worker impairment, and that the term presumes an initial standard by which the worker's job performance can be measured.

3.2 Summary of Responses

The NRC recognizes that illicit drug abuse and the misuse of legal substances such as alcohol, prescription drugs, and over-the-counter medications can impair workers in the performance of their safety-related duties and result in significantly reduced workforce reliability. The scientific evidence is conclusive that significant decrements

in cognitive and physical task performance result from intoxication due to illicit drug abuse, as well as the use and misuse of legal substances. The NRC understands that, except in the case of alcohol, chemical test results do not reveal any direct information regarding drug impairment per se. However, the NRC disagrees with the argument made by commenters that, as a result, chemical tests do not provide information that is relevant to a fitness-for-duty program. The NRC believes that the reliability, integrity, and trustworthiness of workers within nuclear power plants are important to public health and safety. The granting of a license is based on the assumption that workers will abide by the licensees' policies and procedures in all areas. Indications of lack of reliability, integrity or trustworthiness, therefore, even so far as they pertain to off-site behaviors, are relevant to the NRC's need to assure that nuclear power plants are operated safely. The relationship between reliability, integrity and impairment is by no means indirect in the case of drug abuse. Most of the substances under consideration are either physically or psychologically addictive to many individuals. The NRC cannot be confident of the individual's ability to limit the use of addictive substances to situations that do not adversely affect plant safety.

Illegal drug use can result in on-duty impairment. There is a possibility that a worker who uses illegal drugs off-duty may be impaired from those drugs while on-duty, and, even if the worker does not use drugs while on duty he or she may be impaired from either hangover or withdrawal effects associated with drug use. In addition to impairment, any illegal drug use establishes that the worker cannot be relied upon to obey laws of a health and safety nature, indicating that the worker also may not be reliable in terms of scrupulously following the rules and regulations that have been established in the nuclear workplace to ensure the protection of public health and safety. For these reasons, a worker who uses illegal drugs may not be sufficiently trustworthy or reliable to perform his or her duties on the job in a manner that assures public health and safety. In contrast, the legitimate use of legal drugs does not automatically demonstrate this lack of reliability. However, workers who do use alcohol or legal drugs are expected to use those substances responsibly. Irresponsible use of these substances in a manner that results or is likely to result in on-duty impairment, or otherwise demonstrates a disregard for public health and safety, is considered substance misuse within the scope of this rule.

The debilitating effects of long-term drug abuse are also well documented in the scientific literature, and have the potential for affecting complex physical and cognitive functions long after the effects of acute intoxication have dissipated. For example, residual effects of intoxication may persist when the worker returns to work the following day. Hangover effects, withdrawal symptoms, and cycles of drug abuse and abstinence can also result in decreased reliability and diligence. Off-site drug use may also result in increased absenteeism, medical costs, and staffing requirements, thus having adverse effects on overall workforce reliability. Ultimately, drug abuse directly and indirectly affects activities which bear on safety. It is therefore a reasonable conclusion that the abuse of illicit drugs and the misuse of licit drugs pose safety concerns in the nuclear power industry and is predictive of a lack of reliability, integrity, and trustworthiness.

The wide range of potential on-the-job impairment is complex in nature and difficult to observe, and therefore requires a broad approach to assure nuclear power plant safety. In addition to supervisory observation, other means are required to detect drug abuse, psychological stress, and physical injury or illness. To detect illicit drug abuse and the misuse of alcohol and other licit substances, the NRC has adopted a mandatory chemical testing protocol for these drugs. The rule provides for mandatory chemical testing prior to the initial granting of unescorted access or assignment to activities within the scope of the rule (§ 26.24(a)[1]). Mandatory chemical testing is to be conducted on a random basis to effectively detect and deter illicit substance abuse and misuse (§ 26.24(a)[2]). For-cause testing is to be conducted after an accident in which the contribution of employee performance cannot be ruled out or based on reasonable suspicion that an individual is intoxicated or demonstrates behavior indicative of substance abuse or other involvement with drugs (§ 26.24(a)[3]). Following a positive test for drug abuse, follow-up chemical testing will be used on an unannounced basis to verify abstention from the use of drugs or misuse of alcohol and other licit drugs (§ 26.24(a)[4]).

The NRC agrees that on-the-job impairment is a result of many complex factors, and that impairment is a complex phenomenon, depending on the cause of impairment, individual circumstances, and the job task at hand. The NRC recognizes that on-the-job impairment may result from substance abuse, psychological stress, or physical injury or ailment which can pose unacceptable safety risks, and the rule reflects this position. The NRC believes that trained, competent, reliable, and trustworthy workers are essential for the safe operation of nuclear power plants. The fitness-for-duty rule addresses the potential for worker impairment of any kind, including substance abuse that could affect the safe operation of nuclear power plants. In the assessment of a worker's application for access authorization, the background of the worker, psychological state, and criminal record are assessed. Similarly, any use of or involvement with illicit drugs, on or off duty, and the misuse of alcohol and other licit drugs provide evidence that the worker may not be fit for duty.

The NRC recognizes that even with a relatively high rate of random testing and with vigilance on the part of licensees to detect impairment or potential impairment in the workplace, the existence of drug problems within the workplace cannot be entirely eliminated. The undetected presence of drugs can be inferred from even a low positive test rate. However, the NRC concludes that the design features, redundancy of safety systems, and extensive training for unexpected equipment and personnel malfunctions provide reasonable assurance that the public health and safety is protected provided drug abuse continues to be aggressively addressed by the nuclear industry. The final rule provides reasonable measures to assure that nuclear power plant workers can safely, competently, and reliably perform their duties.

4.0 Scope of Rule

4.1 Summary of Comments

4.1.1 *Non-Power Reactors and other Licensees.* Several comments were received from universities and others involved with research reactors or other non-power reactors. The commenters stated that there is no need to extend coverage of the rule to these facilities because a drug-related problem has not been demonstrated to exist and that a relatively minor threat is posed by these facilities to the public safety. Unbearable costs and impracticality were also cited as arguments against inclusion of these facilities in the rule. A few comments were received from individuals involved with SNM handling, making the same general points. There were no comments

supportive of expanding coverage of the rule to facility types other than nuclear power reactors.

4.1.2 *Construction.* Comments were received from two licensees recommending that the language of the rule be changed to include plants during the construction phase.

4.1.3 *Types of Workers Covered.* The random testing provisions of the proposed rule would apply to all persons granted unescorted access to protected areas at operating nuclear power reactors. Most of the commenters who objected to this provision commented to the effect that including all individuals with unescorted access to protected areas is unnecessary, and asserted that many of these individuals, e.g., vendors, secretaries, clerks, and some engineering and management personnel, have no potential for precipitating or escalating a safety-related incident. As an alternative, it was suggested that only those licensee or contractor personnel with unescorted access to vital plant areas should be subject to random testing, since this more-limited group was viewed as including all individuals with the capacity to do significant, safety-related harm.

4.1.4 *Contractors.* Many commenters pointed out the lack of specificity concerning licensee vs. contractor responsibilities. Most of these, mainly from licensees, were of the opinion that the contractor should have full responsibility for a qualified fitness-for-duty program.

4.1.5 *Technical Support Center (TSC) and Emergency Operations Facility (EOF) Staff.* Several comments received on this issue stated that licensee or contractor personnel who may be required to respond to the TSC or EOF have been granted unescorted access and so are already covered under the rule and need not be specifically mentioned in § 26.3. Commenters questioned whether any non-licensee or non-contractor personnel involved with the TSC or EOF would have to be covered under the fitness-for-duty program.

4.1.6 *NRC Staff and NRC Representatives.* Many commenters contended that NRC staff should be subject to the same fitness-for-duty requirements, including random testing, as are licensee staff. Some thought that NRC representatives should be subject to these requirements also.

4.2 Summary of Responses

4.2.1 *Non-Power Reactors and other Licensees.* The NRC sees no reason at this time to extend coverage of the rule to other facility types. No modifications to the rule are required to satisfy the concerns addressed by the comments, because the rule is presently limited to nuclear power reactors. The NRC may consider extending the coverage of the rule at a future time.

4.2.2 *Construction.* The NRC agrees with the comments received that licensees holding construction permits should fall under the scope of this rule to the extent that a minimum program is provided. Wording indicating the provisions of the rule that pertain to construction sites has been added at Sections 26.2(b) and (c).

4.2.3 *Types of Workers Covered.* The NRC believes that the inclusion of all workers with unescorted access to the protected area within the scope of the rule is the proper response to the threat constituted by substance abuse. All such workers have the ability to carry in and distribute impairing substances. All such workers can engage in deliberate or accidental actions that can lead to challenges to safety systems or interfere with the ability of other workers to safely operate and maintain the plant. Although Federal requirements preempt State and local concerns in the area of radiological safety, in those states that support an on-site presence requiring unescorted access, the NRC may consider providing access to the chemical testing portions of the NRC's fitness-for-duty program if so requested by the individual states.

4.2.4 *Contractors.* The NRC believes that it is appropriate to hold licensees responsible for all workers to whom the licensee grants unescorted access, whether the workers are licensee employees or contractor or vendor personnel. The manner in which the licensee assures that contractor and vendor personnel are subject to the requirements of the fitness-for-duty program described in this part is left to licensee discretion, however. For example, nothing in the rule prohibits licensees from accepting the fitness-for-duty programs of their large contractors and vendors when those programs are effective and meet the requirements of this part. At their discretion, licensees may also choose to provide chemical testing and training for contractor and vendor personnel who are granted unescorted access to protected areas of a plant. This provision would likely be used when the contracting organizations have insufficient resources to support their own fitness-for-duty programs. The rule would require the licensee to provide a procedure to enable a contractor employee to appeal a positive alcohol or drug determination; this would not apply where the contractor is administering his own alcohol and drug testing. In recognition of the temporary relationship between licensees and most of their contractors and vendors, the NRC does not require the licensees to ensure that EAP services are provided to contract workers. However, nothing in the rule prohibits licensees from making these services available to contractor employees.

4.2.5 *Technical Support Center (TSC) and Emergency Operations Facility (EOF) Staff.* The NRC believes that it is particularly important that individuals who have TSC and EOF assignments related to nuclear power plant safety can be relied on to perform under the emergency conditions that would require them physically to report to the TSC or the EOF. To clarify the Commission's intentions in this matter, the words "physically report" have been added to § 26.2(a) of the rule. State and local representatives who may be present in licensee emergency facilities located outside the protected area and do not have responsibilities directly affecting reactor safety are not covered by the rule. Otherwise, these representatives would be covered by the licensee's program, or as an alternative, be covered by the NRC's program. Licensee employees, contractors, or vendor representatives who are unexpectedly called to licensee emergency facilities during an accident are also not covered by the rule as this group is ill defined and likely to be used only in supplementary capabilities.

4.2.6 *NRC Staff and NRC Representatives.* The NRC agrees with the commenters who asserted that NRC staff and representatives should also be subject to fitness-for-duty requirements. However, the NRC cannot allow the access of its employees to any part of the licensee's nuclear power facilities to be restricted. The NRC needs prompt, unfettered access to properly perform its regulatory duties and the proper performance of these duties requires public confidence that NRC employees not be intimidated or impeded in any way by those they are responsible for regulating. In general, the NRC expects that any NRC employee who requires unescorted access will be subject to the chemical testing provisions of the NRC's fitness-for-duty program. The Commission must reserve the right to obtain unescorted access for any of its employees.

The NRC also agrees that its contractors must be fit for duty and may cover certain of its contractors under the chemical testing provisions of the NRC plan. The Commission expects that NRC contractors who are granted unescorted access will either be subject to the

NRC's program, the licensee's program, or to a program that the NRC accepts as adequate. To be consistent with the Commission's intent, "representatives" has been deleted from § 26.2(a) of the rule, and replaced with "employees."

5.0 Chemical Testing

5.1 Summary of Comments

A large number of comments were received concerning the chemical testing provisions of the rule. These pertained primarily to the random testing provisions, but comments were also received concerning testing before granting unescorted access, for-cause testing, and follow-up testing.

The comments on random testing were directed both toward random testing, in general, and the proposed use of urinalysis as a testing technique, in particular. Comments were received that provided statements of general support or opposition to the random testing provisions. Comments were also received that raised questions about specific elements of the random testing program in the proposed rule.

5.1.1 *Opposition to Random Testing.* Opposition to random testing was expressed by numerous individuals; several unions including the Brotherhood of Carpenters and Joiners of America, the Utility Workers of America, and the International Brotherhood of Electrical Workers; over 200 union members as part of a letter writing campaign; one utility; and a few other organizations. While most explicitly supported the goal of a drug-free workplace, opposition to random testing as a means to achieve this goal was stated in the strongest terms.

A number of reasons were given for opposition to random testing. Many commenters were specifically opposed to random testing as an unwarranted invasion of privacy. Numerous commenters expressed the opinion that random testing is an infringement of Constitutional rights. Several questioned whether the extent of the drug problem in the nuclear industry warranted such drastic action.

Other reasons cited for opposition to random testing included:

- The view that random testing is ineffective in achieving the NRC's goals of deterrence and detection,
- Better techniques are available for deterring and detecting drug use,
- Random testing is excessively burdensome and expensive,
- Random testing is embarrassing and demeaning,
- Random testing creates morale problems and may thus lead to the loss of qualified and drug-free workers from the industry, and
- Inaccuracies in the testing process will lead to innocent people being accused and punished for wrong-doing.

5.1.2 *Support for Random Testing.* While many licensees viewed random testing as only one part of a comprehensive fitness-for-duty-program, most licensees and NUMARC expressed strong support for random testing as a major component of an effective program. This view was shared by several other organizations, such as contractors and vendors, as well as many individuals. NUMARC cited industry experience that the implementation of random testing programs has typically resulted in lower levels of drug problems.

Local No. 51 of the International Brotherhood of Electrical Workers expressed support for random testing when it is supplemented by behavioral observation. The Local reported that the affected workforce at the Illinois Power Company Clinton Nuclear Station is tested on a random basis each day and that this testing program, coupled with behavioral observation, has apparently proven to be a deterrent to drug abuse. This testing program was achieved through collective bargaining and is considered by the Local to be a valuable working practice. A check with the utility revealed that 100 percent of the workforce is given an unannounced test on an annual basis; and in addition, all persons are subject to random testing at a 20 percent rate. Since the rate of positive tests has significantly declined, the utility may plan to lower the rates.

5.1.3 *Alternatives to Random Testing.* A number of comments were received in response to the NRC's request for information on alternatives to random testing. The unions and affiliated locals and individuals, a number of other individuals, two licensees, and a few other organizations expressed the opinion that the goals of random testing could better be addressed through other methods. The majority of these commenters stated that a combination of behavioral observation, primarily on the part of the supervisor, and for-cause testing was both adequate and effective. Opinions were expressed that behavioral observation and for-cause testing have the advantages of not subjecting everyone to needless tests, dealing with fitness-for-duty problems in addition to drug abuse, and being more likely to stand up under review of the courts than random urinalysis. Most licensees also supported behavioral observation and for-cause testing, although not as a substitute for random testing.

A number of commenters suggested specific observational techniques including computer-assisted neurophysiological and neuropsychological tests, physical skills tests such as those used by law enforcement personnel, and Ocular Kinetics. Others suggested that the annual physical be used to screen for drug abuse, either through chemical testing or observation. Unannounced, random medical examinations were also proposed. Sacramento Municipal Utility District provided a detailed description of its program based on screening by trained medical personnel. This program was also cited by a few other commenters.

Several commenters proposed that drug awareness and health education were more effective deterrents. Other commenters stated that greater emphasis on rehabilitation would be more effective than random drug testing.

A few commenters suggested that pre-employment or pre-access drug screening was adequate. A few additional commenters preferred announced or periodic unannounced testing to random testing. Finally, a few commenters suggested that the NRC direct its attention to the underlying causes of drug abuse, such as the alleged poor work environment at nuclear power plants, rather than at detecting and punishing drug users.

5.1.4 *Specific Changes in Random Drug Testing Provisions.* Among the commenters who generally accepted the provision for random drug testing, a number of comments were received concerning the specific approach outlined in the proposed rule. Many of these comments, such as those having to do with drug types and cut-off levels, are summarized elsewhere. One major concern, however, had to do with the rate of testing to be required by the NRC.

Although the NRC had specifically requested comments on the preferred rate of testing, many commenters felt that the intention of the NRC was to require testing at a rate of 300 percent annually. Most of the comments received, therefore, addressed whether a 300 percent annual rate of testing should be imposed.

The 300 percent testing rate received very little support among those who otherwise supported random testing. NUMARC and most licensees stated that industry experience demonstrated that many fitness-for-duty programs had been successful with substantially lower rates of testing. Several commenters stated the opinion that a 300 percent testing rate would be unnecessarily

burdensome to the licensee in terms of costs, and to the individual in terms of repeated testing. A number of commenters questioned whether information from military experience that was apparently used in the NRC's decision to propose a 300 percent testing rate was appropriate to the nuclear power industry with its older and more stable workforce. Finally, one commenter questioned whether the testing laboratories could effectively handle the workload implied by a 300 percent testing rate.

Numerous commenters suggested alternatives to the 300 percent testing rate. Proposals ranged from a 5 percent per year rate to a 200 percent per year rate. However, NUMARC and most licensees proposed a 100 percent annual test rate for the random testing program. They further requested that the 100 percent rate be reevaluated based on the experience of utilities, and be reduced to a 25 percent rate if warranted by experience. A few commenters requested that the testing rate be left to the discretion of the individual licensee, because licensee management would be most knowledgeable about their particular situations.

A number of other testing strategies were proposed. One basic approach that was favored by several commenters was to require unannounced annual testing of all workers, augmented by random testing at a lower rate, such as 25 percent per year. Several other commenters suggested techniques for protecting individuals from being over tested. These included a request that a worker not be re-tested until all other workers have been tested, a request that tested workers be subjected to a lower rate of testing for the balance of the year, and that there be limits imposed on the maximum number of tests for a particular worker in a given year.

Commenters also expressed the opinion that workers of different types should be tested at different rates. A few commenters expressed the opinion that the testing rate should be relaxed for workers in non-safety critical jobs. Many commenters requested that licensees be allowed to establish different testing programs for their own, versus contractor or vendor, employees. Specifically, a number of utilities stated that treating all workers as one population would result in those workers who are permanently on-site being tested more frequently than those workers who are on-site for only part of the year. By having separate testing populations for licensee and contractor or vendor employees, the commenters felt that the burden of testing would be distributed more fairly.

Two inquiries were received concerning policy for those randomly selected individuals who are not on-site at the time they are selected. One commenter asked how they would be folded back into the testing population. The other stated the position that the workers should not be required to return to work solely for the drug test.

Several comments were received requesting changes in the definitions of random and unannounced tests contained in § 26.3.

5.2 Summary of Responses

The NRC is sensitive to the issues raised in opposition to random testing in general and to random urine testing in particular. Nevertheless, the NRC believes that there is sufficient evidence supporting the effectiveness of random testing in deterring and detecting substance abuse and that a carefully designed chemical testing program covering persons authorized for unescorted access to the protected area of nuclear power facilities is warranted at this time. As indicated below, in response to the sensitive issues of privacy and protection of individual rights, the NRC has taken great care to provide strict specimen collection procedures, chain-of-custody, laboratory certification, test confirmation, and confidentiality requirements within the rule. The NRC is convinced by evidence from the military and from licensees already implementing random testing procedures that random testing is an essential and effective component of the fitness-for-duty program. The NRC has designed the rule to minimize, to the extent possible, the expense and burden of the chemical testing component upon licensees, contractors, vendors, and upon their workers. Stringent quality assurance requirements are imposed upon the licensees, contractors, and vendors as well as upon the laboratories that will be conducting the chemical tests to ensure that test results will be accurate and that false positive results will be essentially eliminated.

Although the NRC believes that behavioral observation and for-cause testing comprise important elements of a substance abuse deterrence and prevention program, and has included them in its rule, it does not believe that, at present, these elements alone are sufficient to provide the level of deterrence and detection necessary. Nevertheless, the NRC appreciates the potential value of developing techniques in behavioral observation and detection of impairment through testing, and intends to monitor progress in these areas. It is prepared to modify the requirements of the fitness-for-duty testing program to incorporate such elements as they become viable, as long as the techniques address the reliability and trustworthiness issue of use as well as the safety issue of current impairment.

The NRC is sensitive to the importance of employee morale to plant safety, and has taken care to provide safeguards in the program to assure the fairness, uniformity, and accuracy of the random testing. The NRC also recognizes the value of health education and rehabilitation programs in assisting workers and in deterring substance abuse, and notes evidence that random testing programs have been found to be an effective incentive for workers to seek information and assistance. To this end, the NRC has included in the rule, as discussed below, requirements for a licensed physician to review positive test results prior to notification of the licensee, and is requiring that licensee workers have access to an employee assistance program designed to provide assessment, short-term counseling, referral services, and treatment and follow-up monitoring.

The NRC has considered a number of alternative rates and sampling procedures to address the many comments received. The NRC agrees that the high rates of testing needed in the military may not be as essential for the nuclear power industry, as long as adequate coverage and deterrence is assured. In this regard, the NRC notes that the Navy, using a 300 percent per year testing rate, observes about 5 percent positive tests. Commenters in the nuclear industry, with random testing programs, reported less than 1 percent positive tests, with a utility using a 100 percent per year rate reporting 0.5 percent positive. This appears to be reflective of a substantially different workforce population. The approaches considered were:

- Alternative A from the proposed rule, which sets the two goals that at least 90 percent of the workforce be tested and that the testing rate for the already-tested population during a year not be set lower than a rate equal to 30 percent of the workforce. The disadvantage of this alternative is its complexity of administration and the provision of a lesser deterrent during part of the year.
- Alternative B from the draft rule that requires testing at a rate equal to 300 percent of the workforce. The disadvantage of this alternative is the possible excessive disruption of work

activities and the testing of a few individuals at a very high rate which may impact morale. The cost of this rate may be excessive given the reported low number of positive tests for testing rates at 100 percent per year or lower in the nuclear industry.

• A method whereby each worker is randomly assigned a day during the next 365 days on which to be tested, and then is randomly reassigned to a day in the following 365-day period. The worker could be tested several times in one year, but is guaranteed at least one test per year. This allows for testing of the entire workforce during any 365-day period and reduces the testing rate in comparison to Alternative B (estimated rate: 200 percent). However, there is a possibility that more workers may be selected for testing on a given day than the licensee has a capacity to test. The disadvantage of this alternative is the need to select testing dates well in advance and the security problems which may result.

• A method whereby all workers are subjected to unannounced testing once during the year, and random testing at a low rate (e.g., 25 percent-50 percent) is also used during the year to assure ongoing deterrence.

• A method whereby random testing is conducted at a rate equal to approximately 100 percent of the workforce, resulting in about two-thirds of the workers being tested during the course of a given year. This is the alternative selected by the Commission and is reflected in the final rule.

While the NRC has considered a number of alternatives, several of the alternatives proposed by commenters were eliminated. The proposals for testing rates lower than 100 percent per year cannot currently be supported, although the NRC will consider reducing testing rates after several years based on positive experience in the industry. For the time being, however, the NRC believes that testing rates substantially below the 100 percent rate would not assure adequate deterrence. The NRC does not anticipate licensees experiencing significant problems in finding laboratory capacity to support rates in excess of 100 percent. Because of the need to assure an adequate minimum rate of testing, the NRC cannot leave the choice of a testing rate solely to the discretion of the individual licensee.

The proposal that workers not be retested until all other workers are tested and the proposal that there be a specified maximum number of times that workers are tested within a year cannot be supported because they would make the process non-random and would defeat some of the deterrent value of testing. Several of the above alternatives would have the effect of limiting the amount of retesting on particular individuals.

The NRC recognizes that vendor and contractor personnel could be subjected to lower rates of testing to the extent that they are not on-site for the entire year. The NRC believes that there are several strategies available to deal with the implied over-testing of licensee employees. The licensee can divide those being tested into discrete populations (e.g., employees and contractors, or even by contractor). The NRC expects that all categories of workers will be tested in accordance with the alternative rate and procedure selected for the final rule. The NRC will permit the licensee to sample within categories of workers, to sample randomly on at least a weekly basis among those currently on-site, or to employ some other method that satisfies the standards of the selected alternative for all categories of workers covered under this part.

The NRC does not believe that additional guidance is needed on how to deal with workers who are not on-site when they are randomly selected for testing. Current practice is to either test them immediately upon return to the site (with a supporting procedure that prevents disclosure of their selection), place them in a special pool of people to be randomly selected within a few weeks, or to return the person to the testing pool and select someone else. Usually, the licensee assures itself that there is a legitimate reason for the absence, and, if any patterns are evident an investigation is usually conducted along with for-cause tests. Current industry practice is considered adequate on this point.

6.0 Reliability of Test Results

6.1 Summary of Comments

The NRC received numerous comments pertaining to the reliability of test results. Several comments in this category expressed concern about the perceived high rate of false positive results and the possible consequences to workers. An official of the Utility Workers Union of America contended that immunoassay screening tests have false positive rates of 5 percent. A private individual cited a Human Relations Institute & Clinic's report claiming that laboratories using initial and confirmatory test procedures have had false positive rates ranging from 4.5 percent to 23.8 percent. Two commenters, a private individual, and an International Brotherhood of Electrical Workers (IBEW) union member asserted that testing laboratories in general have had false positive rates of 30 percent to 60 percent, respectively. The United Brotherhood of Carpenters and Joiners of America and two union locals, one of the IBEW and another of the Coalition of California Utility Workers, cited Center for Disease Control (CDC) study data from the early 1980s to claim that testing technologies are too inaccurate. One set of comments, mostly from the IBEW, wanted the NRC to ensure a 100 percent, or error-free, testing rate. Commenters attributed false positives to low cut-off levels, cross reactivity between drugs, and the varying levels of voided metabolites in the body associated with marijuana use. One commenter, the Utility Workers Union of America, thought that individuals who had received false positives should be awarded monetary compensation. Another commenter, the United Brotherhood of Carpenters and Joiners of America, contended that the EMIT 100 test used in initial screening had too high false negative rates.

Some commenters, mostly NUMARC and 39 licensees supporting the NUMARC comment, thought that the validity of the test results could be challenged either by the generation of true positives from use of over-the-counter drugs and other legal substances or by the mishandling of samples. Four other commenters (Florida Power and Light, the Oil, Chemical and Atomic Workers Union [OCAW], an IBEW union worker, and a private individual) identified the following as possible challenges to the validity of test results: mislabeling or misidentification of samples; use of improper sample collection techniques; inadequate safeguards against tampering; failure of laboratory equipment; passive inhalation of marijuana; time of day of the sample; and erroneous reading of test results. NUMARC and OCAW recommended adherence to chain-of-custody procedures, in general, while the Wisconsin Electric Power Company and the United Brotherhood of Carpenters and Joiners of America specifically recommended those procedures outlined in the HHS Guidelines. The Duquesne Light Company recommended that chain-of-custody procedures be followed at the site and in the laboratory. Houston Lighting and Power asked the NRC to prohibit personnel from working in the "Fitness-for-Duty Program" (that is, the testing program) who have relatives working at the site.

6.2 Summary of Responses

The NRC acknowledges the concerns regarding the rate of false positives and specimen collection and handling techniques, and recognizes that these concerns are based upon problems that existed several years ago when drug testing programs were being introduced. The Federal Aviation Administration, in their response to public comments on the same matter (53 FR 47032, November 21, 1988), provided a clear response that we find no reason to improve:

* * * In the early years of drug testing and analysis, laboratory security and analytical procedures had not reached today's level of sophistication. False-positive test results occur primarily in analysis of a specimen during an initial screening test, although contemporary screening tests, such as immunoassay tests, have become extremely accurate and approach 99 percent accuracy levels. Despite its increased accuracy, the initial screening test remains a less expensive test used only to yield a preliminary indication of the possible presence of drugs or drug metabolites. In order to ensure the integrity and accuracy of any test result, each positive initial screening test result must be confirmed using GC/MS analysis. The GC/MS confirmation test is an extremely accurate and sophisticated test and is virtually error-free when used in compliance with the DHHS guidelines * * * The Mandatory Testing Guidelines will provide a system of checks and balances during collection and analysis of specimens. This system ensures the integrity and accuracy of the tests using appropriate scientific methods and rigid chain-of-custody procedures * * * Since the mid-1980s, laboratories have become increasingly sophisticated in their analytical methods and chain-of-custody procedures. Many laboratories have compiled extensive records demonstrating scientific accuracy and protection of individual specimens. For example, CompuChem Laboratories, a major drug testing laboratory, has analyzed over 500,000 urine samples, conducting discrete testing for nine different drugs which resulted in nearly five million distinct analyses of these specimens, since 1980. CompuChem also has analyzed approximately 750,000 urine samples for the presence of two different drugs, resulting in nearly 1.5 million analyses of these specimens, pursuant to its contract with the military. None of the over six million analyses performed for DOT, the military, and other private and public entities has resulted in a false-positive test result.

In late 1987, a CompuChem clerical worker incorrectly labeled two samples that belonged to DOT employees. Within hours after the test results were questioned by the Medical Review Officer, CompuChem and the Medical Review Officer had identified and corrected the error. CompuChem was not satisfied with its prompt resolution of the error. As stated in its comment to the NPRM, CompuChem has instituted an additional system of review by CompuChem personnel and computer checks, to ensure that "* * * this one in a million error will not reoccur.

Another drug testing firm, PharmChem Laboratories, has conducted over eight million nonmilitary drug tests nationwide. In its statement to FAA during the public hearing held in San Francisco on June 9, 1988, PharmChem notes that several courts have determined that the GC/MS confirmation test is virtually 100 percent accurate, assuming that proper chain-of-custody procedures are followed * * *

The NRC has adopted the provisions of the HHS Guidelines with some modifications to further ensure the integrity and accuracy of test results using appropriate scientific methods and rigid chain-of-custody procedures at the site and in the testing laboratory. The confirmatory testing process also eliminates any false presumptive positive tests resulting from a cross-reacting drug detected during initial screening. As cross-reacting substances are generally prescription or over-the-counter medications, testing procedures in a licensee's fitness-for-duty program will include an inquiry on the individual's use of these medications.

Chain-of-custody procedures and a system of reviews, checks, and balances during collection and analysis of specimens outlined in the NRC Guidelines limit and prevent errors and possible subversions. To protect the worker from inappropriate sanction due to any errors in the testing process, cross-reacting substances, or legitimate medical use of controlled sustances, a Medical Review Officer (MRO) screens all presumed positive test results and may interview those individuals who have tested positive with the GC/MS confirmatory test. The MRO is trained in prescription and over-the-counter (OTC) drug interaction as well as the physical signs of illicit drug abuse. A comprehensive discussion of the MRO's responsibilities and a discussion of matters such as clinical signs of abuse are contained in the "Medical Review Officer Manual: A Guide to Evaluating Urine in Drug Analysis" (September 1988) published by the National Institute on Drug Abuse. The worker has an opportunity to identify any ingested licit, prescription, OTC drugs as well as certain food substances that may affect a test result. The chain-of-custody and collection procedures outlined in the NRC Guidelines, along with computer techniques of tracking specimens, limit the probability of mishandling, mislabeling, and misidentification of samples. The NRC Guidelines also outline procedures for the collection of samples to ensure the integrity of the samples and to limit opportunities for sample tampering. To further limit the possibility of subversion of the integrity of the testing process, the NRC Guidelines require licensees to carefully select persons responsible for administering the testing program based upon the highest standards for honesty and integrity and to implement measures appropriate to ensure that these standards are maintained. Background evaluations of testing program personnel would be conducted to verify the integrity of such individuals given the potential misuse of that position. Behavioral observation and periodic re-conduct of the background evaluations would assure continued integrity. Supervisory personnel and an individual's co-workers would be prohibited from performing as collection site personnel and consequently from being involved in the chain-of-custody process.

The NRC does not believe that "passive inhalation" of marijuana smoke will lead to false positives. Studies conducted to simulate conditions that result in passive inhalation have not accurately reflected conditions outside the laboratory often using artificially devised and extremely confined areas with poor ventilation, followed by immediate testing after prolonged exposure. The cut-off levels in the NRC Guidelines will be set sufficiently high to preclude the possibility of controversy due to chances that a positive test resulted from passive inhalation. The NRC notes that a trustworthiness question may be raised even in the case of passive inhalation. The only effect associated with the time of day of the sample is that urine samples collected earlier in the day contain higher concentrations of drugs or drug metabolites. Samples collected earlier in the day do not generate more false positives as initial positives are still confirmed with the GC/MS test. Erroneous reading of test results would be limited by chain-of-custody procedures and the system of reviews required of testing laboratories.

7.0 Training and Behavioral Observation

7.1 Summary of Comments

The NRC received numerous comments regarding the scope of training required of licensee, contractor, and vendor personnel granted unescorted access to protected areas. Most commenters concurred that training should be provided to all employees covered under the rule to ensure that they understand the licensee's fitness-for-duty program, their responsibilities, the consequences of substance abuse, and the availability of assistance through the Employee

Assistance Program (EAP). In accordance with NUMARC, many commenters supported the training of supervisory and managerial personnel in behavioral observation techniques and procedures for initiating appropriate corrective action, including referral of employees for medical assessment or counseling. However, a majority of commenters also expressed strong opposition to the proposed level of training required of non-supervisory personnel assigned escort duties (§ 26.22[b]).

The NRC also received a significant number of comments regarding the requirement that initial training of licensee personnel be completed prior to assignment of duties within the scope of this rule and within three months of initial supervisory assignment, as applicable (§§ 26.21[b] and 26.22[c]). Most of these commenters requested that the NRC revise the proposed rule to allow drug awareness and behavioral observation training to be completed within six months of initial supervisory assignment. Commenters also suggested that refresher training be completed every two years rather than annually.

7.2 Summary of Responses

The NRC has revised the proposed rule to clarify its intent that escort personnel are not required to receive training in supervisory responsibilities. The revised rule requires that all non-supervisory personnel assigned to escort duties must be familiar with techniques for recognizing drugs and indications of the use, sale, or possession of drugs; be familiar with techniques for recognizing aberrant behavior; and be knowledgeable of the proper procedures for reporting incidents of aberrant behavior to the appropriate management authorities.

The NRC received many comments opposing the required completion of drug awareness and behavioral observation training of supervisory and managerial personnel within three months of initial supervisory assignment. However, because of the critical position that supervisory and managerial personnel serve in detecting impaired workers, the NRC has determined that the current provision regarding supervisory training is necessary and will remain as stated in the rule.

The NRC has also determined that the provision requiring licensee personnel to receive annual refresher training in drug awareness and behavioral observation techniques will remain as stipulated in the proposed rule. Because supervisory personnel represent the first line of defense against fitness-for-duty problems, it is critical that they be trained to recognize these problems and handle them appropriately. Therefore, the NRC believes that the training of supervisory and managerial personnel in behavioral observation techniques will provide licensees with an invaluable tool for the detection and deterrence of drug-and alcohol-related impairment and for the detection of impairment from other causes. Because of the significant level of knowledge and training required to accurately detect subtle indications of drug or alcohol impairment and the critical need to identify drug and alcohol abusers before they compromise public safety, the NRC believes it is prudent to require supervisory training on an annual basis, or more frequently when necessary. In addition, the NRC will continue to require annual refresher training of all non-supervisory personnel to ensure that licensee and contractor employees understand the requirements of the licensee's fitness-for-duty program, are aware of their responsibilities, and, in the case of licensee employees, are aware of opportunities for assistance available through EAP services. NRC audits of licensee programs and interviews with contractor and licensee personnel have indicated a need for this level of refresher training.

8.0 For-Cause Testing

8.1 Summary of Comments

8.1.1 *Suitability of For-Cause Testing.* As summarized earlier, many commenters stated that they were in favor of for-cause testing in place of alternative testing methods such as random testing.

8.1.2 *Definition of Impairment.* Several commenters including NUMARC stated that the current definition of for-cause testing is too broad. Suggestions for improvement included replacing "is impaired" with "may be impaired" or "may have demonstrated aberrant behavior." Finally, commenters stated that most of the examples in paragraph 26.24(a)(3) of when for-cause testing should be required need better definition. Several examples were suggested.

8.1.3 *Testing Following an Accident.* Several commenters stated that requiring for-cause testing following an accident would inhibit root cause analysis of the accident. One commenter stated that for-cause testing should be required after a serious accident.

8.1.4 *Initiation of Testing.* Several commenters addressed who should be allowed to initiate for-cause testing. Several commenters stated that "impaired behavior" can only be determined by a physician or other health care professional. Others thought that a minimum of two management officials must document an employee's impairment. One commenter stated that for-cause testing should not be the result of a "discrete expression of concern by a nameless accuser."

8.2 Summary of Responses

The NRC agrees with the commenters that the definition of the circumstances in which "for-cause testing" is appropriate should be clarified. The definition provided in § 26.3 has been deleted and the language in § 26.24(a)(3) has been revised. The NRC does not agree that impaired behavior can only be determined by a physician or other health care professional. Supervisors are close to their workers and directly monitor worker performance, often on a daily basis. The NRC also does not agree that a minimum of two managers should be required to document a worker's impaired behavior. In some cases, the impaired behavior may be observed by only one manager during a task that cannot be easily repeated.

9.0 Sanctions

9.1 Summary of Comments

9.1.1 *Period of Denial of Access.* Sections 26.27(b)(2) and (b)(3) stipulate that, as a minimum, the first positive test confirmed by the Medical Review Officer shall result in immediate removal from access for at least 14 days and referral to an EAP for assessment and counseling. Any subsequent confirmed positive test would result in removal from unescorted access for a minimum of three years. A worker who is involved in the sale, use, or possession of illegal drugs while within the protected area of a power plant would be removed from covered activities for a minimum of five years. This section further specifies that the rule does not prohibit the licensee from taking more stringent actions.

This section prompted many and varied comments. Many licensee commenters including NUMARC argued that the entire § 26.27 should be deleted because licensee management has the responsibility to decide these issues. They believe that establishing sanctions is not within the Commission's statutory authority. Other licensees recommended that the rule should not prescribe any specific time periods for these events because each must be treated on a case-by-case basis. For instance, a licensee commented that some relatively minor situations do not require even fourteen days to assess the worker's drug usage,

determine a solution to the problem, and safely return the worker to unescorted access.

There was no particular consensus among those commenters who mentioned specific time periods for removal from access. Local No. 51 of the International Brotherhood of Electrical Workers recommended that a worker be suspended for five days after the first confirmed positive test and for ten days after the second. The System Council U–2 of the IBEW recommended discharge for six months after the second confirmed positive. Local No. 51 also believed that the three-year removal from access is too severe as it would almost certainly lead to dismissal. Permanent dismissal was recommended by Houston Lighting and Power even for the worker's first confirmed positive test. Carolina Power and Light believed that the 14-day requirement is adequate. Many licensees believed that they should have the option to undertake measures ranging from counseling through discharge following the first positive test result. They stress that they must have the flexibility to do whatever it takes to assure at least a chance at successful rehabilitation of the worker.

There was somewhat less variance in the comments on the appropriate response to a determination that a worker has been involved in the sale, use, or possession of illegal drugs within a protected area. Several licensees stated that the worker should be discharged in such circumstances. NUMARC recommended that the worker be permanently barred from access. Another licensee would discharge the employee but allow the person to be considered for rehire after three years.

9.1.2 *Follow-up Tests.* Section 26.27(b)(3) of the proposed rule [§ 26.27(b)(4) in the final rule] would require that workers whose access is reinstated "shall be given unannounced follow-up tests at least once every three months for three years after reemployment to verify continued abstinence from drugs." This requirement prompted a variety of responses. Various union representatives stated that this testing rate and duration would be "excessive, harsh, and punitive" and argued for less frequent testing over a shorter probation period. NUMARC recommended that workers regaining access be tested once every three months but for one year only. On the other side of the spectrum of views, Public Service Electric and Gas stated that the condition of such workers requires "close monitoring, tracking, and continued urine sampling." Rancho Seco's practice in such circumstances requires weekly urinalysis during the first quarter after return to work and monthly testing thereafter. (The length of the probation period was not mentioned.) A third set of commenters indicated that the frequency and duration of such follow-up tests need not be prescribed in the rule but should be left to the employer's determination.

9.2 Summary of Responses.

9.2.1 *Period of Denial of Access.* The Commission's intent in § 26.27 is that a worker who may pose a threat to safety be removed from safety-sensitive duties as long as he or she remains such a threat. These sanctions are not meant to serve as punishment for substance abuse. Thus, the section allows but does not mandate the permanent denial of unescorted access to protected areas in any of the enumerated drug-related events. The section also recognizes that the severity of threat to safety is a complex matter. Obviously, a long-term heroin addict with an expensive habit would likely be a far more serious threat than a recreational marijuana user. Yet, an effective fitness-for-duty program must be prepared to deal with both types of problems.

It is the NRC's belief that § 26.27(b)(2) includes an appropriate mix of flexibility and stringency. The 14-day period seems reasonable in that, in almost all cases, it would take at least that long to diagnose a worker's problem, determine a solution, and assure that the problem is addressed before the worker can again be granted access; this may, in some cases, be limited to counseling. Also, the NRC believes that 14 days is needed to conclude that the first confirmed positive test may have resulted from behavior that does not in fact pose a serious safety threat. This minimum period is not meant to constitute punishment. Instead, this period is intended to ensure an adequate time for assessment of the worker's condition and requirements. The NRC does not take a position on whether a worker in this situation should be denied unescorted access longer than 14 days. That is to be decided by the licensee.

Removal from unescorted access for a minimum of three years after a second confirmed positive test is, on the other hand, quite a stringent requirement. Some commenters noted that dismissal may occur in such cases. The NRC believes that this measure is appropriate, however, in light of this rule's goal of assuring that workers are not impaired due to substance abuse. A second positive test would indicate that the person is most likely not able to stop using the substance in question and could, therefore, pose a threat to safety. The severity of a three-year loss of unescorted access may also provide an incentive for employees to voluntarily enter into rehabilitation programs when they realize the seriousness of the substance abuse problem.

Section 26.27(b)(3) also appears to be well suited to the rule's goal. The tenor of most comments on this section favored more stringent measures than the section would require, and the NRC wishes these commenters to note that the five-year period is intended to be only the minimum removal from unescorted access necessary to protect public health and safety. The five-year period should operate as both a deterrent to the proscribed activities and as a measure that may in fact result in permanent denial of access in most cases where involvement in illegal drugs is detected in protected areas.

9.2.2 *Follow-up Tests.* The NRC recognizes the need to adjust the frequency of follow-up testing as required in § 26.27(b)(4). Research indicates that recidivism is most likely during the first 90 days following treatment (Hubbard and Marsden' 1986; Rounsaville. 1986). Most relapses to substance use will take place during that first 90-day period. If a person can remain substance-free during that period, he or she will have a chance to continue to be abstinent.

In light of this research, the Commission has amended this section. Rather than requiring a uniform frequency of testing for the entire three-year probation period, the heightened potential for recidivism during the early stages of that period should be recognized with a rate of testing more frequent than once every three months.

As amended, this section requires that workers whose access is reinstated be given unannounced follow-up tests at least once every month during the first four months of restored access. During the next two years and eight months, the worker should be tested at least once every three months to verify continued abstinence. As compared to the proposed rule's requirement, the higher testing rate during the first four months would provide the worker with an increased incentive to remain abstinent as well as create an increased probability of detecting any resumption of substance use that may occur. Thereafter, the lower testing rate would be less onerous for the worker while still providing added assurance that resumption of substance use would be detected.

10.0 Impairment From Other Causes

10.1 Summary of Comments

A number of commenters discussed issues pertaining to impairment from causes other than workers' use of illegal drugs.

10.1.1 *Identified Additional Sources of Impairment.* Workers' use of substances was mentioned most often in these comments, especially the use of alcohol, prescription medications, and over-the-counter medications; the use of caffeine was also mentioned. Comments were also made about the following specific sources of worker impairment: (1) Emotional and mental stress in general and stress specifically related to poor attitudes, poor morale, and family problems; (2) fatigue, including fatigue caused by mandatory long hours of duty, rotating shifts, and workers working shifts incompatible with their biological clocks; (3) illness, including allergies; and (4) physical and physiological impairments. One commenter noted that illnesses, particularly colds and flu, are major causes of impairment because both the illness and the medication a worker takes to treat the illness can cause impairment. With regards to fatigue, one commenter objected to the proposed rule because, under the rule, it was his interpretation that workers may be disciplined and possibly terminated due to fatigue caused by work schedules and overtime.

A number of commenters did not specifically address any one of these sources of impairment, but expressed one or more of the following general concerns: (1) The rule should be expanded to address several or all of these potential causes of impairment, regardless of the source of the impairment; (2) it is inappropriate for the rule to focus on illegal drug use and not to also address, in detail, the use of legal drugs, alcohol, or both; and (3) the rule requires licensees to address impairment from sources other than illegal drug use and to provide reasonable assurance that on-duty workers are not impaired from the use of any substance, but it provides no guidelines or direction towards this end.

Some commenters noted that urine testing is an inadequate means of detecting impairment caused by many of these factors, and thought that specific tests for impairment, medical clarification exams, or supervisors' observations should be used to detect impairment.

10.1.2 *Legal Drugs.* Some commenters thought that the rule should not address legal drugs. One commenter stated that impairment should not be addressed and that the concern should be limited to illegal drug use. Another commenter thought that the language of the rule should be changed to state that the goal of the rule is to achieve a workplace free of *illegal drugs* and their effects rather than a "drug-free workplace." This commenter also noted that this change should not preclude a licensee from prohibiting on-site use of alcohol. Several commenters stated that expanding the rule to address legal drugs would raise substantial legal concerns (e.g., making the use of legal drugs illegal, forcing a violation of physician/patient confidences) and one commenter thought that these concerns merely highlight the fact that any drug testing is an affront to personal liberty.

NUMARC stated that prescription drugs should be addressed only generally; workers should be required to notify their supervisors of intended use of prescription drugs and care should be taken in response to positive tests that occur as a result of prescription drug use. If prescription drugs are included in the testing program, the response to positive test results should be based on medical advice and workers must not be penalized unless they are abusing the legal/prescription drug. This position was strongly supported, with about half of those commenters who discussed legal drugs supporting the NUMARC position.

Several commenters stated that only the drugs listed in the HHS Guidelines should be the basis for industry testing. The addition of drugs beyond those specified in the HHS Guidelines would create a conflict with HHS restrictions. Further, a number of commenters were concerned that the procedures specifying how licensees are to identify additional drugs and incorporate them into their programs would defeat the goal of establishing uniformity. Commenters also thought that these procedures were unworkable, burdensome, and open to legal challenges.

A number of commenters stated that the rule should not be expanded to address legal drugs, and that workers should not be denied the use of medications necessary or beneficial to their health and well-being. Several commenters stated that regulation on prescription drugs is outside of the appropriate scope of NRC regulations and that such decisions should be made by physicians and on an individual basis. Other commenters thought that testing for legal drugs is unnecessary, but workers should report the use of those drugs either to their supervisors or to the medical department for an individual decision to be made about what actions should be taken to ensure against on-the-job impairment. One commenter indicated that the prescribing physician could be consulted when making this determination.

Other commenters stated that it was appropriate to expand the testing program to include legal drugs that may cause impairment. Some of these commenters want the rule to specifically state this, while others want the rule to address the testing protocol for these drugs in detail, as has been done for the classes of drugs for which the rule does require testing. The following drugs or drug classes were identified by various commenters as warranting special concern: barbiturates, benzodiazepine, methaqualone, methadone, and propoxyphene. For some of these drugs and drug classes, cut-off levels were proposed.

Commenters also pointed out that some of the classes of drugs currently tested for include drugs that can be used for legitimate medical reasons without creating significant impairment, and the rule should be expanded to ensure such legitimate use of these drugs is protected. Several commenters stated that requiring workers to report the use of prescription drugs to their supervisors adequately addressed the concerns surrounding the use of legal drugs.

10.1.3 *Alcohol.* Many commenters made statements about whether or not alcohol should be added to the rule. The majority of these commenters, about 60 percent, stated that the rule should be expanded to address alcohol, but that details of how alcohol will be addressed should be published for public comment before the changes are implemented. These commenters include NUMARC, a number of commenters who stated that they support the position stated by NUMARC, and a number of commenters who made this statement without linking it to NUMARC. About 25 percent of the commenters addressing this issue stated that alcohol should be addressed in the rule without such a qualification. About 15 percent of the commenters who addressed this issue stated that alcohol should not be addressed in the rule. Other commenters expressed the concern that the extent to which alcohol is addressed in the rule should not make implementation an insurmountable burden.

The following reasons were given for delaying implementation of an alcohol rule: (1) Time should be allowed for the industry to study and develop additional suitable and effective programs to handle alcohol-related problems, much the same as has been provided for drug program development, and (2) prior to final rulemaking, the details of the

alcohol requirements should be made available for public comment.

The following reasons were given for including alcohol in the rule: (1) Alcohol use and misuse is prevalent, (2) alcohol use can lead to on-duty impairment, (3) alcohol misuse creates fitness-for-duty problems comparable to and perhaps more substantial than the problems caused by illegal drug use, and (4) an NRC regulation requiring testing for alcohol would lend support to established programs.

The following reasons were given for excluding alcohol from the rule: (1) Programs already in place and guidance being produced by Edison Electric Institute (EEI) effectively deal with alcohol-related problems, making additional guidance or regulations unnecessary; (2) if additional prescriptive detail is provided, and if that guidance conflicts with established programs, the rule could result in a less effective approach to dealing with alcohol-related fitness-for-duty problems.

Many specific recommendations were made about the desirable characteristics of an alcohol testing program. A number of commenters recommended using breath tests for blood alcohol concentrations (BACs), although some commenters said that blood tests are more accurate and should therefore be used. Most commenters stated that alcohol should be treated in a manner similar to other drugs, and that testing for alcohol and other drugs should be done on the same occasions. NUMARC, along with about 35 other commenters, stated that tests for alcohol should be done on a random basis, as compared to three commenters who stated that alcohol should only be included in for-cause tests. A few commenters thought that alcohol testing as part of pre-access or preemployment screening was unnecessary. Several commenters addressed BAC cut-off levels by stating the level they recommended, stating the level they were currently using, or urging the NRC to establish a cut-off level. Recommended or currently used cut-off levels ranged from 0.04 percent to 0.10 percent, with the vast majority of commenters citing the 0.04 percent cut-off level. One licensee requested the NRC to establish the 0.04 percent cut-off level, but stated that if the NRC does not establish this level, they would use the 0.10 percent BAC cut-off level used in their local state motor vehicle codes. With regards to sanctions in the event of a violation of alcohol policy, commenters expressed both the opinion that it is appropriate to regard a positive alcohol test the same as a positive drug test, and the opinion that sanctions for violations of the alcohol policy should differ from sanctions for violation of the drug policy and should be left to the discretion of the licensee.

One commenter recommended a rule requiring a period of pre-work abstinence from drinking, such as the eight-hour rule used in the aviation industry.

10.2 Summary of Responses

The NRC agrees that the possible sources of impairment identified by these commenters constitute important fitness-for-duty concerns that should be addressed in licensees' programs. Further, the NRC believes that the rule does address these issues, in that the rule requires licensees to provide reasonable assurance that workers are not impaired from any cause and requires licensees to make EAPs available to workers to assist them with these types of problems.

10.2.1 *Additional Sources of Impairment Not Warranting Action at This Time.* The NRC does not believe that the health and safety of the public is best served by the NRC providing, at this time, additional prescriptive regulations regarding emotional and mental stress, fatigue, illness, and physical and physiological impairments. The NRC believes that there are a number of ways of effectively addressing these problems, that often the approach used must be tailored to the specific case at hand, and that sound management practices, which are consistent with the licensee's management style, can be expected to be more fruitful than would detailed prescriptive regulations.

Additional Sources of Impairment Warranting Action at This Time

The NRC agrees with the commenters who stated that the rule should be expanded to address impairment that is caused by workers' use of alcohol and legal drugs. The NRC believes that these are especially significant areas of concern because of the negative effects of alcohol and prescription sedatives on vigilance and judgment, which are important components of many jobs within protected areas. The NRC also believes that there is often a relationship between illegal drug abuse and the abuse and misuse of legal drugs and alcohol. The distinction between some types of medication use and drug abuse is not absolute. All use of prescription and over-the-counter drugs lies somewhere in a spectrum that has responsible safe use at one end, dangerous abuse at the other end, and practices such as irresponsible misuse and accidental misuse somewhere in the middle. For these reasons, the NRC believes that a licensee's policies regarding workers' use of legal drugs and alcohol is as important for ensuring public health and safety as the licensee's policy regarding illegal drug use.

The nexus between illegal drug abuse and the abuse or misuse of legal drugs and alcohol makes it difficult to separate these issues. For example, in some cases the proposed rule addresses classes of drugs that are both abused illegally and used in legal medications (e.g., opiates and amphetamines). Therefore, within a drug testing program adhering to the proposed rule, an overlap between illegal and legal drugs already exists.

Additionally, many of the issues that must be resolved when addressing each of these areas are very similar. For example, if chemical testing is to be used to detect the use of one or more legal drug(s) or alcohol, then the issues pertaining to the testing protocol that must be addressed when testing for illegal drugs—such as chain of custody, establishing cut-off levels, laboratory quality assurance—must all be addressed. Further, all of these issues should be addressed because individual workers may have closely-related substance abuse problems involving illegal drugs, legal drugs, and/or alcohol. Effectively detecting and deterring the abuse of some substances (illegal drugs) while failing to detect and deter the abuse or misuse of others (legal drugs, alcohol, or both) may result in some workers who have drug problems merely substituting one impairing drug with another rather than giving up the unacceptable use of any drugs. This close tie between illegal drug abuse as a fitness-for-duty concern and legal drugs and alcohol as fitness-for-duty concerns, along with the significance of these issues, warrants the NRC addressing all of these issues in a fitness-for-duty rule.

The NRC does not agree that it is beneficial to wait until licensees have studied these problems and attempted to develop their own solutions before taking action. The NRC believes that, as was the case when the NRC delayed rulemaking regarding illegal drug use, such a practice may contribute to inconsistent policies in the industry and that it is possible that some policies will be developed that prove to be inadequate. Further, such a waiting period would result in an unacceptable delay in the implementation of important components of the NRC's fitness-for-duty rule.

10.2.2 *Legal Drugs.* The NRC does not think that it is appropriate to publish

detailed regulations concerning legal medications at this time. The NRC acknowledges that the task of establishing the panel of drugs for which testing is warranted, and the appropriate testing protocols to be used when performing those tests, is an important and difficult task that warrants careful consideration. Further, the NRC believes that all of the approaches recommended by commenters regarding the regulation of workers' use of legal drugs may prove unacceptable. Some of the recommended approaches can be expected to provide inadequate assurance that a worker's use of legal drugs does not result in on-duty impairment. Other approaches may prove to be unnecessarily intrusive. For example, it may be unnecessary for workers to report to a supervisor or Medical Review Officer their use or intended use of some prescription drugs.

The NRC believes that requiring workers to report to the Medical Review Officer their use or intended use of some types of drugs is essential, however, and should be considered by licensees. However, the NRC believes that defining these drugs in terms such as "all prescription drugs" or "all drugs that may cause impairment" may be a poor method of developing such a list. There may be over-the-counter drugs, such as over-the-counter stimulants and sedatives, that have significant potential for causing on-duty impairment and thus warrant being reported. Conversely, there may be prescription drugs that have very little potential for causing impairment and do not warrant being reported. Specific policies could be produced that would eliminate the need for workers to report their use of these drugs. For example, it may be possible to assure that some drugs do not create significant problems simply by providing guidance to workers about when the drugs can be used or about the maximum doses of the drugs that can be used by on-duty workers. The development of such guidance could simplify licensees' fitness-for-duty programs, promote consistency throughout the industry, and reduce the intrusive nature of the fitness-for-duty programs. However, the NRC believes that such guidance should be developed by the industry. Input from the medical community would be especially valuable in this area and should be sought. Should timely progress not be made in this area, the NRC may institute additional rulemaking.

The rule has been modified to require licensees to educate workers about the effects legal drugs may have on job performance. Also, in line with comments, the NRC accepts that chemical testing for some legal drugs is appropriate, however, whether to test for these drugs, such as barbiturates and benzodiazepines, is left to the discretion of each licensee. The Commission has asked the staff to explore with the Secretary, DHHS, the addition of these drugs to the required testing panel.

10.2.3. *Alcohol.* The NRC believes that alcohol is a fitness-for-duty concern. The NRC believes that no on-duty alcohol consumption should be permitted, and that conducting breath tests to determine workers' BACs is a necessary step towards detecting and deterring any on-duty use or any unacceptable off-duty use of alcohol.

Breath tests, when conducted following the protocols in the NRC "Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs" (Appendix A to Part 26), provide relatively accurate and reliable measures of BACs, and are sufficient for all alcohol tests. Workers should have the right to have further confirmatory tests performed at their request. Because of the improved accuracy obtained when using blood samples, further confirmatory tests will be performed using blood samples analyzed with gas chromatographic methods.

The NRC believes that the scientific literature strongly demonstrates that BACs can be correlated with impairment, and that a BAC cut-off level of 0.04 percent is appropriate. This cut-off level is low enough to provide reasonable assurance that alcohol-caused impairment will be detected when breath tests are performed, and high enough to eliminate practical and technological problems associated with very low cut-off levels. The NRC therefore requires that blood alcohol concentration cut-off levels be set at 0.04 percent. Licensees have the general responsibility for evaluating the fitness of their personnel whether or not some specified limit is indicated for either drugs or alcohol. Licensees may establish lower cut-off levels, but should recognize that there are practical problems associated with a zero or near-zero cut-off level for alcohol, and should consider the potential impacts of these problems carefully before using very low cut-off levels.

The NRC recognizes the value of a required period of abstinence from drinking that should precede all scheduled tours of work. The NRC therefore is requiring licensees to include an abstinence period of at least 5 hours in their fitness-for-duty programs.

The NRC does not agree with those commenters who state that chemical tests for on-duty alcohol-caused impairment need only be performed on certain drug testing occasions, such as when for-cause testing is performed. The NRC believes that licensees should not indicate to workers that alcohol use that results in on-duty impairment is of less concern than is illicit drug use. Further, the NRC believes that any use of alcohol that results in on-duty impairment poses a significant potential threat to public health and safety.

Finally, the NRC agrees with comments that state that it would be easy for a worker to pass an announced test for alcohol misuse, such as a pre-employment or pre-access authorization screening. However, this is true for many illicit drugs that, like alcohol, are eliminated from the body relatively quickly. As is the case when testing for these illegal drugs, detection of rule violations may be rare, as workers need only abstain for a reasonable period prior to the test to be assured of passing the test. However, it is also very likely that those who are detected through such tests will have a very substantial problem that must be addressed. Some licensees who currently include tests for alcohol in their preemployment screening process have discovered several alcohol abusers who would have gone undetected without the screening process. For these reasons, the NRC requires that chemical tests for the misuse of alcohol be conducted whenever tests for illegal substance abuse are performed. Furthermore, to assure deterrence against "lunch time drinking" the rule will require that random testing be conducted at various times during the day.

With regards to sanctions related to alcohol in the final rule, the NRC agrees that it may not be essential that the actions taken to address alcohol misuse be identical to the actions taken to address illegal substance abuse. However, the NRC does believe that it is essential that licensees test for the misuse of alcohol and that detected impaired workers are removed from duty. Further, sanctions must be adequately severe to deter drinking practices that result in on-duty impairment, and severe enough, as compared to the sanctions associated with illegal drug use, to ensure that workers who abuse illegal drugs are not encouraged to merely switch from a pattern of unacceptable drug taking activity to a pattern of unacceptable alcohol consumption. One way of doing this is to take actions in the event of a violation of the alcohol policy that are

the same as, or similar to, the actions taken when the illicit drug policy is violated. In the absence of such actions, an effective program must provide assurance that a high level of deterrence is present and that workers who are impaired as a result of alcohol misuse are removed from duty.

11.0 Confidentiality of Test Results

11.1 Summary of Comments

A number of commenters were concerned about the confidentiality of test results and the potential impact of the rule on the privacy of workers. There was concern that test results might be inappropriately released to the detriment of workers. A number of specific suggestions were made to protect workers' rights.

11.1.1 *Confidentiality of Results.* One commenter favored identifying samples by a number coded to an individual worker rather than by name. Other commenters believed that there should be a protocol defining which licensee's workers should have access to fitness-for-duty records at various stages of the testing process. Several commenters expressed the view that test results should not be releasable to licensees or contractors under 10 CFR 26.27(b) without the written approval of the affected worker. One commenter proposed that all medical personnel involved in the fitness-for-duty process adhere to the American Occupational Medical Association's (AOMA's) "Code of Ethical Conduct for Physicians Providing Occupational Medical Services," and the AOMA "Ethical Guidelines for Drug Screening in the Workplace."

11.1.2 *Use of Samples for Other Purposes.* A number of commenters were also concerned that specimens taken from workers would be used for purposes beyond the scope of the proposed fitness-for-duty rules and suggested that language be added to the regulations limiting use of the samples to designated purposes.

11.1.3 *Tests Conducted by the Licensee.* The proposed rule (10 CFR 26.24[d]) would allow licensees to conduct preliminary tests of a sample before forwarding it to a laboratory. Several commenters were concerned that results of such preliminary tests would be inappropriately disclosed and acted upon prior to confirmation by the contract laboratory. They proposed that access to the results of such preliminary tests should be strictly limited, perhaps to the licensee's laboratory staff only.

11.1.4 *Confidentiality for Employee Assistance Programs.* One commenter noted the lack of specific confidentiality requirements in the proposed (§ 26.25) on employee assistance programs and stated that such protections were necessary for the programs to be successful. Another commenter stated that the term "safety considerations," as used in this section, should be defined. A commenter also requested that language be added that employee assistance program EAP counselors would notify management when a belief exists that any worker's condition (self-referred or not) may constitute a hazard to himself or others.

11.1.5 *Access to Records.* Several commenters suggested that access to the results of chemical testing should be limited to the greatest extent possible, especially given the potential damage to a worker from disclosure of false positive results. In particular, many commenters believed that test results should not be released to law enforcement agencies.

There were a number of comments concerning access to fitness-for-duty records by NRC employees and representatives. Several commenters expressed the view that the NRC has no need for access to individual names and that if such information were provided it might be inappropriately disclosed or made available to the public. It was noted that licensees are expressly directed not to include the names of individuals under the proposed reporting requirements to NRC (§ 26.73[a][3]), but that NRC is eligible to receive names under proposed § 26.29(b).

Two commenters suggested that the Protection of Information (§ 26.29) include references to contractors and vendors as well as licensees. They further suggested that the reference to employment decisions be replaced by access decisions. Another commenter raised the question of whether contractors as well as licensees should be able to obtain fitness-for-duty information under the proposed regulation at § 26.29(b). An additional commenter suggested that release of fitness-for-duty information under a court order be added to the list of permitted disclosures under § 26.29(b).

11.2 Summary of Responses

11.2.1 *Confidentiality of Results.* The NRC believes that further requirements for the protection of worker records at the testing laboratory beyond the requirements of the NRC Guidelines are not needed at this time. Section 3.1 of the Guidelines contains specific protections for such records.

The NRC concurs in the comment that information on a worker denied unescorted access or removed from his position under a fitness-for-duty program shall be provided to licensees and contractors subject to this part but only upon a written release by the affected worker. Appropriate language has been added to § 26.27(a). The effect of the language is that if the worker elects not to provide such a release to the hiring licensee or contractor, the worker would be denied unescorted access to protected areas.

The comment that Medical Review Officers subscribe to the AOMA Code of Ethical Conduct and their ethical guidelines for drug screening in the workplace has merit. The NRC will continue to study this suggestion. For purposes of the present rulemaking, however, the NRC is satisfied that the statement of qualifications for Medical Review Officers in § 2.9(b) of the NRC Guidelines is adequate and sufficient.

11.2.2 *Use of Samples for Other Purposes.* The NRC believes that provisions in the rule limiting use of laboratory results to the purpose and scope of the rule are adequate. The protections afforded by the NRC Guidelines and § 26.29(b) are deemed to be sufficient. Specifically, § 2.1(d) of the NRC Testing Guidelines requires that specimens collected under Part 26 may only be designated or approved for testing as described in Part 26, and shall not be used to conduct any other analysis or test without the permission of the tested individual. Moreover, there should be no incentive for employers to disclose the information to unauthorized persons because of the possibilily of liability related to such disclosure.

11.2.3 *Tests Conducted by the Licensee.* The NRC concurs that there is a potential for abuse of positive test results from preliminary tests conducted by the licensee. These preliminary tests do not have the accuracy of laboratory-conducted confirmatory tests. Consequently, the final rule limits access to the preliminary test results to the licensee's testing personnel.

11.2.4 *Confidentiality for Employee Assistance Programs.* The EAP requirement at § 26.25 specifies that such programs are to provide confidential assistance except where safety considerations must prevail. The NRC believes that the plain meaning of these terms is sufficient for this rulemaking and that further clarification in the rule is not required. The NRC concurs in the suggestion that employee assistance program counselors notify management when there is a reasonable belief that any worker's condition may constitute a hazard to himself or herself or others, and the rule's language has been clarified.

11.2.5 *Access to Records.* The NRC has elected to retain the provisions on entities entitled to access to laboratory records as proposed in § 26.29(b) with the exception that release of the information under a court order is added. The NRC does not anticipate requesting the results of laboratory tests correlated to individual names. Nevertheless, the NRC wishes to reserve the right to have access to specific results when needed for particular situations involving safety and investigative matters such as malfeasance in the administration or management of the fitness-for-duty program. The NRC also has decided to retain the provision providing access to appropriate law enforcement officials, but has added the provision that such officials must be under court order. It is noted that there is no requirement to routinely provide such officials with laboratory results. Moreover, it is unlikely that such results would be requested because the officials would have no prior knowledge of the results of laboratory tests.

The NRC concurs in the comment that contractors within the scope of the rulemaking should be included in the disclosure and access provisions of § 26.29(b) and the final rule reflects this addition. The reference to employment decisions in the proposed rule has been replaced by access decisions.

12.0 Employee Assistance Programs

12.1 Summary of Comments

The NRC received a significant number of comments from licensees regarding employee assistance programs. The majority of commenters agreed that employee assistance programs services are an effective method of combatting the broad spectrum fitness-for-duty problems. However, most of the commenters specified that under the proposed rule the scope of licensee employee assistance program services should be limited to regular, full-time licensee personnel; contractor or vendor personnel should not be covered. Several other commenters indicated that employee assistance program services should not be regulated by the NRC rule in any manner, and would be better addressed by the licensees themselves.

12.2 Summary of Responses

The NRC believes that employee assistance program services provide a valuable tool in combatting fitness-for-duty problems in the nuclear power industry. Therefore, as currently stipulated in the rule, it is the responsibility of each licensee to ensure that all licensee personnel have access to employee assistance programs services and that contractor employee assistance programs meet the criteria of the licensee's employee assistance programs. The NRC has also noted that supervisory personnel should not refer employees directly to counseling or treatment. Rather, supervisory personnel should refer employees to an employee assistance program counselor for assistance and further evaluation and referral.

13.0 Importance of Health and Human Services Guidelines

13.1 Summary of Comments

13.1.1 *Proposed Alternatives to the HHS Guidelines.* Several commenters suggested that an alternative to the HHS Guidelines is the College of American Pathologists (CAP) Forensic Urine Drug Testing (FUDT) program. The commenters contend that the CAP FUDT program is as equally rigorous as the HHS Guidelines but better suited to licensee's needs because: (1) It has an educational component for laboratories, (2) it has accredited 25 laboratories as of October 11, 1988, whereas NIDA has accredited none, (3) the CAP FUDT program allows laboratories to test for additional drugs and at other cut-off levels than those specified in the HHS Guidelines, and (4) the CAP FUDT program does not require approval from the HHS Secretary.

One commenter suggested that an alternative to the HHS Guidelines is the "AFL–CIO Guide for Drug and Alcohol Testing on the Job." Several commenters pointed out that stringent quality controls are required of testing laboratories under state programs; two commenters stated that New York State had a stringent laboratory certification program.

13.1.2 *Applicability of HHS Guidelines to the Nuclear Power Industry.* A few commenters indicated that the HHS Guidelines should be adopted by the NRC in their entirety. The large majority of commenters stated that, although the HHS Guidelines provide many excellent procedures for ensuring the quality of drug testing programs, the HHS Guidelines contain terminology and provisions that are inappropriate for application to the nuclear power industry. The inappropriate terminology and provisions noted by the commenters include (1) references to "agencies," to Pub. L. 100–71, to the Privacy Act, and to the HHS Secretary; (2) limitations in the panel of drugs for which certified laboratories can test; (3) cut-off level specifications defined for screening and confirmatory tests; (4) requirements that a licensed physician, as a Medical Review Officer, review all test results; (5) the conflict with on-site testing created by the requirement that all testing be done by certified laboratories; (6) laboratory certification procedures; and (7) limitations on splitting specimen samples. To ensure that the HHS Guidelines are appropriately adapted to the proposed rule, many commenters recommended that the pertinent sections of the HHS Guidelines be incorporated into the rule itself.

13.1.3 *Limitations in the Panel of Drugs for Which Certified Laboratories Can Test.* A number of commenters specifically supported the intention and value of establishing uniformity across licensees in the panel of drugs, with a smaller number supporting a more flexible approach that allows licensees discretion to deal with local variability in drug use.

A number of commenters objected to the procedures specifying how licensees are to identify additional illegal drugs and incorporate them into their programs, on the grounds that these mechanisms defeat the purpose of uniformity, are unworkable, are burdensome, and open licensees to legal challenges. Some of these same commenters, along with others, recommended that the HHS-specified panel of drugs be expanded to include (for example) alcohol, methadone, barbiturates, benzodiazepine, propoxyphene, methaqualone, and prescription and over-the-counter drugs. Comments made at the public meeting expressed concern about the potential for intrusion into personal medical information if the panel of drugs is not strictly specified and limited.

13.1.4 *Cut-off Levels Defined for Screening and Confirmatory Tests.* A substantial number of comments were received on the cut-off levels for screening and confirmatory tests, many suggesting specific cut-off levels for particular drugs. An important disagreement among commenters centered around the issue of uniformity in cut-off levels. Some commenters recommended that standard cut-off levels be established and applied by all licensees in order to minimize inconsistency across licensees, maximize the defensibility of the cut-off levels, and avoid conflict with the certified laboratory testing procedures. These commenters thought that discretionary cut-off levels were unworkable because they would be challenged in court and were inconsistent with certified laboratory procedures specified in the HHS

Guidelines. Among these commenters, some supported the existing HHS cut-off levels and some recommended that the HHS levels be modified, generally to be more stringent. A number of commenters suggested standards matching those used by the military. Other commenters, particularly those representing licensees with ongoing drug testing programs, recommended that licensees be allowed discretion to establish cut-off levels more stringent than the minimum specified in the rule. As a compromise, some commenters suggested that laboratory procedures and testing be modified to require them to compile results at both the minimum uniform standard cut-off and the discretionary levels established by the licensees.

These commenters provided different reasons for establishing various cut-off levels, ranging from very stringent to more lenient. A few commenters supported the establishment of cut-off levels based on an objective of establishing a drug-free workplace, recommending essentially zero tolerance and setting cut-off levels just high enough to avoid positives from dietary consumption of legal substances. Others proposed the establishment of cut-off levels that were the lowest (most stringent) levels associated with impairment. Others, sometimes explicitly recognizing that the establishment of cut-off levels involves administrative considerations, recommended the use of "standard" and moderate levels that assist in the establishment of an accepted, widely-used standard and reduce vulnerability to legal challenges. Still others, generally those representing the workers and unions, supported cut-off levels that test for impairment rather than use and that set levels where job performance is probably affected.

A number of licensees commented that they are currently operating drug testing programs which have more stringent (lower) cut-off levels than the HHS Guidelines, especially for marijuana. Commenters were divided in their position regarding adoption of the HHS Guidelines for cut-off levels. Some supported the HHS Guidelines; others supported the more stringent levels proposed by NUMARC. A large number of commenters thought that the HHS cut-off level for marijuana was too lenient, citing experience from ongoing programs that a very high proportion (over 80 percent in Commonwealth Edison's 6-year-old program) of positive marijuana test results fall between 20 and 100 ng/ml. A number of commenters provided specific recommendations for screening and confirmatory cut-off levels for individual drug types.

13.1.5 *Regulation of On-Site Screening Test.* Although the majority of comments in this category addressed specific aspects of on-site testing, several commenters objected to conducting on-site screening tests by licensees on the grounds that such testing should not be conducted by employers and that it would be more costly, create too high a risk of false results, and result in claims of inequitable treatment. Other commenters, principally representatives of licensees and a health care products manufacturer, supported on-site screening tests as effective, timely, and less costly, particularly if only specimens that tested positive in the on-site aliquot test are sent to the certified laboratory. Some commenters favored modification of the proposed rule (§ 26.24[d]) to allow licensees to establish HHS-certified on-site laboratories and to avoid conflict with the HHS Guidelines. Changes in the specified procedures for on-site testing were also recommended, including enabling certified laboratories to match the cut-off levels established by the on-site program. The need for careful attention to conflicts with specific wording in the HHS Guidelines was noted. (Further discussion of the cut-off level issue is provided elsewhere.)

13.1.6 *Requirements for Review of Test Results by a Medical Review Officer.* A number of comments were received concerning the qualifications and role of the Medical Review Officer as specified in the HHS Guidelines, paragraph 2.7(b) (53 FR 11985, dated April 11, 1988). Commenters recommended that, should the HHS Guidelines be generally adopted, these specifications should be modified to eliminate the requirement that the MRO be a licensed physician. They recommended broadening the definition to include other licensed medical care providers with training and knowledge in substance abuse disorders and their treatment, identification and use of controlled substances, and prescription practices of pharmacies, and to provide for consultation of the MRO with a licensed physician for resolution of unusual circumstances. One commenter recommended changing the term "Medical Review Officer" to "Medical Review Professionals" to avoid possible confusion with licensee executive officers.

13.1.7 *Laboratory Certification Procedures.* A number of commenters thought that the number of blind samples was excessive and recommended that the requirement for licensees to submit blind samples be eliminated or substantially reduced. One commenter pointed out the potentially negative effects of having licensees prepare the false documentation associated with blind samples, and others questioned whether a sufficient supply of blind samples would be available on a timely basis. A number of commenters also questioned whether sufficient certified laboratory capacity would be available to implement the proposed rule. Comments both supported and opposed the requirement that laboratories be certified by HHS. Those supporting such certification recommended modification of the proposed rule to specify that licensees are to use HHS-certified laboratories that are directed to conduct drug tests consistent with NRC and licensee requirements. Several other commenters objected to the requirement for HHS certification, noting that it would likely prevent them from using high-quality local laboratories, and would prevent them from testing additional drugs or setting more stringent cut-off levels (unless such modifications are made in the application of the certification process, as discussed above). They recommended that the NRC adopt a provision authorizing licensees to utilize a drug testing laboratory that is either certified via the HHS Guidelines or is certified under a state program that is generally comparable to the HHS program. Other commenters suggested authorization of laboratories certified by The College of American Pathologists Forensic Urine Drug Testing (CAP FUDT) program.

13.1.8 *Splitting Specimen Samples.* A number of commenters recommended the use of split samples to provide an additional quality control measure and to further protect the rights of the workers by allowing a second check on confirmed positive results. Commenters differed in their specific recommendations concerning the number (2 or 3) and specific procedures for testing the reserved sample(s).

13.2 Summary of Responses

13.2.1 *Proposed Alternatives to the HHS Guidelines.* The NRC believes that the rigor required by the HHS Guidelines is not matched by any of the proposed alternatives. The NRC Guidelines address many of the concerns expressed by the commenters. The NRC believes that the highest standards are needed to assure that the testing process is accurate, produces valid results, and provides suitable protection for those being tested.

13.2.2 *Applicability of HHS Guidelines to the Nuclear Power Industry.* The NRC believes that many of the basic requirements of the HHS Guidelines must remain a vital component of the NRC drug testing regulations. However, the NRC is aware that the Guidelines, as written by HHS to apply to testing by Federal agencies, do not perfectly fit the circumstances of the licensees regulated by the NRC. There are many references to legal authorities and other matters that are peculiar to Federal agencies (e.g., references to the Privacy Act, to Executive Order 12564, to the Secretary) and terminology that may be confusing in the NRC-regulated industry context. In addition, the HHS drafted the Guidelines to apply to the physical and organizational circumstances of Federal agencies. Obviously, the circumstances of industries regulated by the NRC are very different from those of Federal agencies. Furthermore, as discussed below, other aspects of the rule, i.e., permission to expand the panel of drugs and establish more stringent cut-off levels, require modification of the HHS Guidelines to facilitate implementation. Consequently, the NRC agrees with many commenters and is, in its rule, directly implementing in its own regulations specific testing program guidelines (an adaption of the HHS Guidelines) that are applicable to NRC licensee fitness-for-duty programs. These testing guidelines are intended to leave intact the safeguards for accuracy and privacy in drug testing established by the HHS Guidelines while ensuring that the parties regulated by the NRC can practically implement the requirements. Editorial changes have been made to the HHS Guidelines to adapt the terminology to the NRC and its licensees' fitness-for-duty programs.

Special note should be made that the list of substances to be tested and cut-off levels established in the testing guidelines are subject to change by the NRC in response to industry experience and changes by the Department of Health and Human Services as advances in technology, additional experience, or other considerations warrant inclusion of additional substances and other concentration levels.

13.2.3 *Limitations in the Panel of Substances That Certified Laboratories Can Test.* Under the HHS Guidelines (2.1[a]), a Federal agency's random drug testing program may test a urine sample *only* for certain specified drugs. The NRC Guidelines at Section 2.1 modify this requirement by expanding the minimum panel of substances for which specimens from the pre-access, for-cause, random, and follow-up testing program are to be tested by adding alcohol in addition to marijuana, cocaine, opiate metabolites, phencyclidine, and amphetamines. Furthermore, the rule will allow licensees to include additional drugs, especially those found to be prevalent in their geographic area. Licensees would be required to develop appropriate test protocols and cut-off levels. For-cause tests are not limited to a specified panel of substances.

In determining which drugs to include in the NRC Guidelines, the Commission assessed evidence regarding the extent of use of the various drugs recommended by commenters and the potential for impairment from the licit use, where appropriate, or abuse of those drugs. The NRC concluded that the panel of drugs in the HHS Guidelines adequately covers the most extensively abused illegal drugs, but does not sufficiently address the major drug class of sedatives (i.e., benzodiazepines and barbiturates). The use and abuse of sedatives by nuclear power plant workers are of significant concern for several reasons.

Although most sedative drugs are obtained legally through prescriptions or in over-the-counter medications, these drugs are subject to abuse. In fact, some researchers have suggested that sedative abuse is more prevalent than the abuse of opiates in this country. In addition, continued abuse of these substances can lead to dependency and "physician-hopping" or illegal behaviors to obtain supplies of the drugs. Consequently, detection of the use of sedatives and an evaluation by the Medical Review Officer of the manner in which a worker is using sedatives are important to prevent the development of sedative-abuse problems.

Of greater significance is that the use of sedatives while on the job, even at physician-prescribed doses, may result in significant impairment. Although many types of performance are detrimentally affected by the use of sedatives, attention and the ability to maintain vigilance are particularly impaired. And, when combined with alcohol, the impairing effects of sedatives, especially bartiturates, are long-lasting and severe. However, to maintain consistency with the HHS program the Commission has decided not to include benzodiazepines and barbiturates in the required panel of drugs at this time. The NRC will further explore this matter with the Secretary of the Department of Health and Human Services, and may issue an amendment to Part 26 if deemed appropriate.

In response to objections by licensees to the requirement that they must consult with local law enforcement authorities and drug counseling services to determine whether other drugs are being used in the geographical locale of the facility and the local workforce and, where appropriate, add these drugs to the list of drugs being tested, the NRC has made this element of the program optional. To address the issue of changing drug use patterns, the NRC may conduct periodic reviews of the minimum drug panel that could result in the inclusion of additional substances.

13.2.4 *Cut-off Levels Defined for Screening and Confirmatory Tests.* In response to comments concerning the appropriate cut-off levels at which samples will be considered positive, the NRC proposes the screening and confirmatory cut-off levels set forth in the NRC "Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs." These levels define the standards for establishing presumptive positive and negative results for the minimum panel according to the NRC rule. However, in response to numerous comments by licensees, many of whom have existing drug programs with more stringent cut-off levels for the substances included in the proposed minimum drug panel, the NRC rule establishes minimum standards for the panel of drugs and allows licensees the discretion of setting more stringent cut-off levels for these drugs. For example, instead of using their normal cut-off levels for for-cause and follow-up testing, licensees could obtain data on any trace amounts of drugs for medical evaluation of at-risk persons. Certified laboratories are authorized to test and report results at these more stringent cut-off levels, if so requested by the licensee. In keeping with the objective of uniformity and the establishment of a comparable database, however, the laboratories are *also* required to report results for the "standard" cut-off levels established in the rule.

13.2.5 *Regulation of On-Site Screening Test.* Although the NRC is sensitive to the concerns of workers expressed in the comments, the stringent quality assurance requirements of the rule and the rigor of the HHS certification process have convinced the NRC to retain the option of on-site testing. Under the NRC rule, licensees may perform the breath tests for alcohol and the preliminary screening tests of urine specimens provided that the licensee's staff possess the necessary training and skills for the tasks

assigned, their qualifications are documented, and adequate quality controls are implemented. These requirements have been included in the NRC Guidelines. Following preliminary screening, these licensees would submit all presumptive positive specimens and a sample of negative specimens to an HHS-certified laboratory for a second screen and for confirmatory testing. This will substantially reduce the number of specimens that must be packaged, sent, and handled at the certified laboratory. The NRC rule does not prohibit licensees from establishing laboratories and seeking HHS certification. Should HHS certification be obtained, the licensee would be allowed to conduct both screening and confirmatory tests at this laboratory.

13.2.6 *Requirements for Review of Test Results by a Medical Review Officer.* After careful review of the comments received regarding the Medical Review Officer and examination of the *Medical Review Officer Manual* prepared by the Department of Health and Human Services (September 1988), which describes the role and responsibilities of the MRO, the NRC has concluded that this position does require the qualifications of a licensed physician. To maintain consistency with the HHS program, the NRC has decided to retain the title Medical Review Officer.

13.2.7 *Laboratory Certification Procedures.* The NRC has given careful consideration to the number of blind samples licensees must submit to the certified laboratory and has determined that the number specified in the NRC Guidelines is necessary to maintain adequate quality control. In addition, licensees which expand their drug panel beyond the NRC specified minimum panel are responsible for submitting a sufficient number of appropriately "spiked" blind samples to meet equivalent laboratory quality control requirements for those additional drugs. The NRC has consulted with personnel of the Office of Workplace Initiatives in the National Institute on Drug Abuse and has been assured that sufficient blind samples and laboratory capacity will be available to implement the proposed rule on a timely basis.

Given the importance of protecting workers from false positive test results and the absence of clear evidence that alternative certification procedures provide an equivalent level of rigor, the NRC rule maintains the requirement for laboratories to obtain HHS certification in order to perform confirmatory chemical tests on specimens submitted for tests under the provision of the NRC rule. In addition to HHS certification, laboratories used by licensees must demonstrate comparable performance and rigor in testing for the additional substances included in the licensee's specified panel of substances (i.e., the NRC minimum panel plus any discretional additions of the licensee).

13.2.8 *Splitting Specimen Samples.* The NRC is sensitive to the concerns of nuclear power plant workers regarding the adverse consequences of false positive test results and the advantages of using split samples to provide an additional quality control measure and further protect the rights of workers by allowing a second check on confirmed positive results. The first aliquot, along with appropriate chain-of-custody documentation could be (1) transmitted to the HHS-certified laboratory for screening and confirmatory testing or (2) transmitted to the authorized on-site screening laboratory for preliminary testing. The second aliquot of the split sample, along with appropriate chain-of-custody documentation, could be placed in a secure refrigeration unit or forwarded to a second laboratory for retention. Should the specimen test positive, the second aliquot could be tested by the second HHS-certified laboratory.

In the case of on-site screening, the second aliquot could be discarded if the preliminary test (screen) is negative. If the screening test is conducted off-site, the second aliquot could be discarded immediately upon notification of a negative test result for the specimen. Even though there is a high degree of assurance of the accuracy of the test results provided by the chain-of-custody and HHS-certified laboratory procedures, chain-of-custody concerns by tested workers would remain no matter how precise the process or valid the results. Therefore, the NRC has decided not to mandate nor prohibit split samples; the approach may be used by licensees where additional confidence in the process by the workforce is sought.

14.0 Relationship to Access Authorization

14.1 Summary of Comments

This section covers comments relating to the potential overlap of the proposed FFD rule and Industry Guidelines appended to the proposed Access Authorization Policy Statement (AAPS) appearing at 53 FR 7534, March 9, 1988.

14.1.1 *What is an Appropriate "Suitable Inquiry"?.* A number of commenters raised the issue that the "suitable inquiry" requirement in § 26.27(a) is too severe and also conflicts with the background investigation elements section of the AAPS. Proposed § 26.27(a) requires that licensees conduct a suitable inquiry prior to granting unescorted access to determine if a worker has tested positive for drugs in the past. The term "suitable inquiry" as defined in § 26.3 requires verification of employment history for the previous five years and to determine whether the worker had any positive drug tests. Many commenters pointed out that this requirement will be very difficult and costly to meet in part because prior employers will be reluctant, because of liability concerns, to release records of drug use, even with a signed release form. One commenter pointed out, for example, that under § 26.29(b) a licensee would not be authorized to release such information to another employer who is not also a licensee.

The commenters noted that the required background investigation in Section 6.2.1 of the Industry Guidelines appended to the AAPS covers similar material to the fitness-for-duty rule, but is not as severe. The investigation contains several elements, one of which is a check on an applicant's character and reputation including prior illegal use or possession of a controlled substance. Information is to be obtained from four references, two supplied by the applicant and two developed by the utility. Employment verification is to be obtained for a minimum of three years. In addition, the evaluation criteria in Section 7.1 of the AAPS require utilities to assess the impact of past illegal use or possession of a controlled substance.

One commenter pointed out that the proposed suitability inquiry requirements will conflict with the required background checks for security personnel in 10 CFR Part 73, Appendix B. These background checks require the licensee to investigate a number of elements related to selection of security personnel including whether an individual has any history of alcoholism or drug addiction. There are no specific time periods associated with the required background checks.

14.1.2 *Overlap in Training Requirements.* One commenter stated that the training requirements for supervisors and escorts in § 26.22 already exist in Section 9(c) of the Industry Guidelines and that the requirements in the fitness-for-duty rule could therefore be eliminated.

14.1.3 *Relationship of Employee Assistance Programs to the Proposed Access Authorization Policy Statement.* One commenter raised the question of whether a voluntary referral to an

employee assistance program raises an access authorization issue under the Industry Guidelines appended to the proposed access authorization policy statement. Under the Guidelines, illegal use of drugs is an evaluation criterion for unescorted access (§ 7.1[b]) and an element of the continual behavioral observation program (§ 9[a]).

14.1.4 *Temporary Unescorted Access Authorization.* One commenter noted the temporary unescorted access authorization in § 6.4 of the Guidelines and stated that it should be made clear that during the suitable inquiry period, the temporary access authorization would be available.

14.2 Summary of Responses

14.2.1 *What is an Appropriate "Suitable Inquiry"?.* The NRC recognizes the potential overlap between the required background investigations in the fitness-for-duty rule and the proposed AAPS. The NRC agrees that the background investigation required in the fitness-for-duty rule may be difficult to conduct in some cases and that the desired information may not always be forthcoming. Consequently, the term "suitable inquiry" in § 26.3 has been modified to provide for a "best effort" verification, that is, attempts should be made to obtain information for the entire five year period, but under no circumstances may unescorted access be granted based on an employment check of less than three years. In addition, a requirement has been added to § 26.27(a) that a suitable inquiry will be conducted only after obtaining a signed release from the worker or prospective worker authorizing the inquiry.

The NRC recognizes the potential additional requirements under the fitness-for-duty rule as compared to currently required background checks for security personnel contained in Appendix B to Part 73. Nevertheless, the required checks with prior employers in the fitness-for-duty rule are considered necessary for the safety and security reasons noted earlier.

14.2.2 *Overlap in Training Requirements.* The NRC recognizes that there is some overlap in the two training requirements, but does not find any inconsistencies. Moreover, the fitness-for-duty requirements are more comprehensive, to include techniques for recognizing drugs and understanding the role and responsibilities of other fitness-for-duty program elements such as the employee assistance program. Consequently, no changes were made in the final rule.

14.2.3 *Relationship of Employee Assistance Program to the Proposed Access Authorization Policy Statement.* The NRC recognizes that there is a connection between the employee assistance program and proposed access authorization policy statement requirements. Under Section 26.25, employee assistance program staff will provide confidential assistance except where safety considerations must prevail and when the employee assistance program counselor believes that a worker's condition poses a hazard to himself or herself or others. Otherwise, voluntary self-referrals to the employee assistance program are treated confidentially and are not reported to management; therefore, that information would not be available for disclosure in response to an inquiry of previous employers. The NRC is satisfied that there is not an inconsistency in the employee assistance program and proposed access authorization policy statement requirements and consequently no changes are made in the final rule.

14.2.4 *Temporary Unescorted Access Authorization.* NRC agrees that licensees may grant temporary unescorted access authorization provided that all requirements pertaining to the granting of temporary access have been completed and the prospective worker has passed a chemical test. Clarifying language has been added to § 26.27(a).

15.0 Reporting and Recordkeeping

15.1 Summary of Comments

15.1.1 *Fitness-for-Duty Program Performance Data Form.* Many comments on the data form were received. All were severely negative. The consensus was that the stated data requirements are excessive, unnecessary, and expensive and will contribute nothing to the public health and safety. Virtually all respondents asked for deletion of the form and its associated requirements.

15.1.2 *Reports to NRC.* Section 26.73 directs the licensee to provide information concerning fitness-for-duty events. This was presumed to include identities of violators and a record of the incident and its disposition. Some commenters thought that the NRC is not qualified to ensure the necessary degree of confidentiality demanded for these records, while others pointed out that the NRC handles much sensitive information including classified information and thus is well qualified to receive specific fitness-for-duty data. Among the latter, one commenter went so far as to suggest that the NRC, rather than the licensees, implement and administer the violations tracking system. Public Citizen expressed general support of the reporting requirements and recommended that they be augmented to include additional information.

15.1.3 *Reporting Time Requirements.* Section 26.73(a)(2) requires detailed reports on all significant fitness-for-duty events and actions to be made to the NRC Operations Center by phone within 24 hours and in writing within 30 days. Many commenters claimed that the 24-hour requirement is excessive. Others pointed out conflicts or potential conflicts between reporting requirements in the fitness-for-duty rule and those cited in 10 CFR 73.71, 10 CFR 50.72, and Reg. Guide 5.62.

15.1.4 *Incident Locale.* Commenters posed questions as to whether drug or alcohol-related incidents should be reported if they occur outside protected areas—either on-site or off-site.

15.2 Summary of Responses

15.2.1 *Fitness-for-Duty Program Performance Data Form.* The NRC does not believe that collection of data in a standard format unnecessarily burdens licensees. Collecting data in a standard format would assure that appropriate data is collected, and would facilitate periodic analysis and audits. Certain information is necessary for the NRC to evaluate the effectiveness of the rule (and if necessary, make appropriate improvements or changes) and industry programs and a standard data format would provide a tool for the Commission's periodic review program. No specific improvements to the form were suggested by commenters. However, NUMARC has developed and proposed to the NRC a standard form for data collection. The NRC will specify only the general types of data to be collected in the rule with the expectation that all power reactor licensees will use an NRC-approved NUMARC form.

15.2.2 *Reports to NRC.* The NRC sees no reason to change the rule in response to comments that sensitive information not be provided. The reporting requirements in § 26.73 have been modified to add alcohol and delete written reports of reportable events. The rule has been modified to require periodic submittal of program performance data.

15.2.3 *Reporting Time Requirements.* The NRC will maintain the 24-hour reporting deadline for fitness-for-duty events involving licensed operators and supervisory personnel. Licensees should note that this provision supersedes and relaxes the 1-hour reporting period required for the fitness-for-duty

categories of safeguards events in 10 CFR 73.71. The NRC will publish a revision to Regulatory Guide 5.62 to ensure consistency with this rule.

15.2.4 *Incident Locale.* The NRC has modified the wording of § 26.73, "Reporting Requirements," to make it clear that incidents involving licensed operators or supervisory personnel occurring off-site or external to protected areas must be reported.

16.0 Audits of Fitness-for-Duty Programs

16.1 Summary of Comments

Approximately one-third of the comments received concerning audits of fitness-for-duty programs addressed the frequency requirement for the audits, which is 13 months in the proposed rule. The majority of these commenters stated that the rule should be revised to require an audit every three years, after an initial audit is performed within 13 months of implementation of the program. Most of the other commenters stated that the audit frequency should be once every three or five years. One commenter stated that the audit period should remain on a 13-month cycle.

Two commenters questioned how information that is protected under § 26.29(b) can be used when sharing audit results of contractors as described in § 26.80(a). Section 26.29(b) prohibits disclosing some of the information that would be collected during an audit.

Many commenters stated that the word "effectiveness" in §§ 26.80(a) and 26.80(b) is too subjective and that "compliance with the regulations" should be the requirement.

Several commenters stated that the phrase in § 26.80(b), "individuals qualified in the subjects being audited," should be clarified.

One commenter stated that § 26.80(a) should be revised to delete the requirement for the licensee to be responsible for the effectiveness of contractor programs and implementation of appropriate corrective action for contractor programs since this should be the contractor's responsibility.

Two commenters stated that § 26.80(a) should be clarified as to whether or not a licensee may accept audits for contractors conducted by other licensees.

One commenter stated that the requirement in §§ 26.80(a) and 26.80(c) that audit reports be maintained on-site and at corporate headquarters be changed to corporate headquarters only. The basis for this comment is that some utilities have several reactor sites and maintaining the reports at each site would be a redundant effort.

16.2 Summary of Responses

The NRC has maintained the § 26.80(a) requirement for an audit frequency of nominally every 12 months. This decision is based on the need to assure the reliability and accuracy of chemical testing procedures. As industry experience with fitness-for-duty programs accumulates and is made available to the NRC, the Commission may re-evaluate the frequency of required audits, as warranted.

The NRC agrees that §§ 26.29(b) and 26.80(a) of the proposed rule contained a conflict concerning protection of information. Section 26.29(b) has been revised to explicitly allow licensees to have access to personal information that may need to be examined during audits.

The NRC intentionally has used the word "effectiveness" throughout the rule to ensure that all affected parties maintain an overall concern for the rule's objectives rather than focusing on documentation of program compliance with "the letter of the law." Although compliance is important, the Commission's over-riding concern is an answer to the question, "Is the program working?"

The NRC believes that current wording in the rule is adequate to define auditor qualifications. The intent of this section is to ensure that an individual, for example, who is not a licensed physician and has no knowledge of substance abuse is not assigned to evaluate the effectiveness of a particular Medical Review Officer's decision making. Similarly, the NRC expects that persons who are evaluating testing laboratories will be knowledgeable about the forensic implications of laboratory procedures. Because individuals who possess the requisite skills to conduct these audits are likely to be relatively rare and their services needed only infrequently, licensees will probably find it necessary to contract for appropriate audit staff rather than staffing an entire audit team from the licensee's Quality Assurance Program. Current wording in the rule is intended to recognize and encourage such an approach to staffing program audits.

The NRC does not agree with the commenter who suggested that licensees should not be responsible for contractor programs. As noted in the discussion of comments pertaining to the scope of the rule, the licensee is the granting authority for unescorted access to protected areas and so is responsible for the fitness-for-duty and the reliability of any individuals to whom unescorted access is granted, whether contractor or licensee employee. Only by monitoring the effectiveness of contractor programs that the licensee accepts and requiring necessary changes can the licensee be assured that the trust implied by the granting of unescorted access is warranted.

The intent of the wording in the proposed rule is to reduce the burden on licensees by allowing audits of contractors to be shared between licensees and to reduce the burden on contractors who provide personnel to several utilities by reducing the number of required audits. However, each licensee has the ultimate responsibility to ensure that all contractors performing activities within the scope of the rule comply with the rule.

The NRC agrees it is unnecessary to dictate where the licensees should maintain copies of the audit reports as long as a copy is available for NRC inspection. Section 26.80(a) has been changed accordingly.

17.0 Implementation Schedule

17.1 Summary of Comments

The NRC received numerous comments on the proposed implementation schedule for the rule. Eighteen comments were received from individual licensees. In addition, a number of other licensees submitted letters endorsing the NUMARC position on the rule as a whole, including NUMARC's position on the implementation schedule. Commenters generally agreed that 90 days was insufficient time to implement the provisions of the rule. Problems with the development of training material, modification of existing EAPs, development of administrative procedures, negotiations with unions, and the establishment of contracts with chemical testing laboratories were cited by many of the commenters as reasons for the need for a longer period for implementation. Most commenters suggested that 180 days be allowed for implementation of all provisions of the rule. Some commenters proposed that additional time beyond 180 days be allowed for the implementation of the random testing provisions of the rule.

17.2 Summary of Responses

The NRC places a high priority on the implementation of the fitness-for-duty programs and policies required by the present rule. Many licensees already have in place most of the key program elements. However, because of the complex provisions of the rule, the need for some licensees to establish contractual relations with laboratories,

the need to develop implementation procedures, the need to augment existing training materials, and the need to coordinate the provisions of the rule with numerous contractors and negotiate with unions, the NRC is convinced that the quality of the programs will be enhanced by extending the implementation of all provisions of the rule until 180 days after the effective date of the final rule. Because of the importance of the rule, the NRC cannot support the further extension of the implementation of the random testing provision of the rule past the 180-day deadline.

Although licensees need not submit written policies and procedures to the NRC for approval prior to implementing their programs, the Commission has reserved to itself the authority to review the program at any time to assure that the program meets the performance objectives of the rule. If the review or other inspections detect a shortcoming in the program, the Commission can then require corrective action.

18.0 Legal Issues

18.1 Summary of Comments

18.1.1 *Constitutionality of Rule.* Several commenters noted that significant issues of constitutionality with regard to drug testing in the workplace have been raised under the Fourth Amendment and that these issues are currently being reviewed within the judicial system. Two drug testing cases are on the current calendar of the United States Supreme Court. (*National Treasury Employees Union* v. *Von Raab*, 816 F.2d 170 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1072 (1988); *Railway Labor Executives Association* v. *Burnley*, 839 F.2d 575 (9th Cir. 1988), *cert. granted*, 108 S.Ct. 2033 (1988)). Generally, commenters representing operators of power reactors support the constitutionality of the rule, while commenters representing labor organizations or individuals challenge the rule's constitutionality. A few of these commenters suggested that the Commission delay its rule until the Supreme Court has acted on the cases before it.

A few commenters stated that the taking of the urine sample for analysis presented a violation of a person's right of privacy under the First Amendment to the Constitution.

A few commenters questioned whether the rule might not violate the self incrimination provision of the Fifth Amendment to the Constitution, in particular with regard to the potential for release of adverse test results to local police.

18.1.2 *Federal Rehabilitation Act.* A few commenters suggested that the Commission should address the Federal Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (29 U.S.C. 701–796) in relation to its fitness-for-duty rule.

18.1.3 *Preemption of State and Local Laws.* Several commenters noted that some states have enacted laws that appear to conflict with the Commission's rule, and requested clarification whether the Commission's rule would be preemptive of state and local law.

18.1.4 *Appeal Procedure.* Some commenters questioned the need for and scope of the appeal procedure required by the rule. Reference to due process was seen as importing unnecessarily complicated judicial type procedures, and that fairness was the goal. Reference to collective bargaining procedures was viewed as undesirable because those procedures often incorporate binding arbitration which would also unduly complicate the appeal of denial of unescorted access because of an adverse fitness-for-duty finding. Finally, appeals should be limited to permanent employees of the licensee and not be extended to the employees of contractors.

18.1.5 *Protection of Information.* Some commenters raised questions about the protection of information, specifically reporting of information to local police, and disclosure of information to arbitrators and the affected individuals. One commenter asked the Commission to address the relationship between protection of information under the Commission's rule and the information protection requirements of 42 CFR Part 2, dealing with drug and alcohol abuse treatment programs.

18.1.6 *Collective Bargaining Rights.* A commenter raised a question about the relationship of the Commission's rule to the rights of workers under the National Labor Relations Act to bargain over conditions of employment and asked that the Commission state its position.

18.1.7 *Employee Assistance Program.* A commenter asked for the Commission to indicate its legal authority for including employee assistance programs in the rule.

18.1.8 *Administrative Procedures for Alcohol.* A few commenters questioned whether the notice of proposed rulemaking was adequate to address issues regarding alcohol use and to support the inclusion of alcohol-related provisions in the final rule.

18.2 Summary of Responses

18.2.1 *Constitutionality of Rule.* It is the Commission's considered opinion at this point that continued assurance of nuclear safety in the operation of power reactors fully justifies the rule being promulgated. The imperatives of safe operation of nuclear power reactors demand a workplace where the reliability, integrity and physical and mental fitness for their assigned duties of all categories of workers with unescorted access to plant equipment is unquestioned. The program being mandated by this rule is reasonably related to the achievement of the Commission's safety objective. The Commission has no doubt that the rule will significantly enhance safety of operations at nuclear power reactors. It goes without saying, however, that the Commission will review this rule in light of relevant future Supreme Court decisions, and make whatever revisions those decisions require.

The two cases cited above were decided on March 21, 1989 in favor of drug testing as presented by the circumstances of those cases (*Skinner* v. *Railway Labor Executives Association.* No. 87–1555; and *National Treasury Employees Union* v. *Von Raab.* No. 86–1879). Neither presented issues to the Court for its consideration in the context of the imperatives of nuclear safety nor addressed random testing. However, the logic of those cases gives the Commission added assurance that this rule represents a proper and prudent regulatory action for the protection of public health and safety.

It is already well established that persons working in nuclear power plants have diminished expectations of privacy in the workplace with respect to fitness-for-duty issues. For example, control room operators are licensed under rules (10 CFR Part 55) that require medical examination biennially and general good health. Security personnel are subject to medical and mental qualifications, including use of alcohol and drugs (see 10 CFR Part 73, Appendix B). All personnel and their hand-carried items (such as lunch boxes) are subject to search upon entering the protected areas of nuclear power plants, including pat down searches when metal and explosive detectors are not working or when there is suspicion that the person may be attempting to bring proscribed items into the protected area (see 10 CFR 73.55). Most, if not all, licensees of nuclear power plants also are committed through their security plans under 10 CFR Part 73, to conduct background investigations, administer psychological

examinations, and observe employees for indications of aberrant behavior. Licensees also have behavioral observation programs that follow Edison Electric Institute guidelines. Finally, all persons with unescorted access to nuclear power plants are, by Federal law, subject to a criminal history records check that requires the taking of fingerprints and the submission of the fingerprints to the Federal Bureau of Investigation (see 10 CFR 73.57). The provision of a urine sample or taking of a breathalyzer test is a small increment in the diminished expectation of privacy under which persons work in a nuclear power plant. Accordingly, the Commission concludes that its rule does not constitute an unconstitutional invasion of the right of privacy. Indeed, persons working in nuclear power plants may already be considered to be highly regulated, and, in regard to Fourth Amendment issues, within the ambit of *Shoemaker* v. *Handel*, 795 F.2d 1136 (3rd Cir. 1986), *cert. denied*, 479 U.S. 986 (1986).

On the assumption that the rule being promulgated is within the Constitution in other respects, the rule's provisions on protection of information do not infringe upon the right of a person to not incriminate himself. In the Commission's view, the case of *Schmerber* v. *California*, 384 U.S. 757 (1966) controls the issue. In that case, the Court upheld the taking of a blood sample for alcohol analysis against a Fifth Amendment challenge. A urine sample is no more incriminating.

18.2.2 *Federal Rehabilitation Act.* The Federal Rehabilitation Act of 1973, as amended, does not include, within the concept of "handicapped person", an individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents that individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others (see 10 CFR 4.101(a) and 29 U.S.C. 706(7)(B)).

An individual whose urine or breath sample tests positive for drugs or alcohol is obviously a current user whose continued unescorted access to plant equipment constitutes a threat to nuclear safety. However, a person who enters into an employee assistance program and whose subsequent tests are negative is not a current user and would be entitled to the protection of the Federal Rehabilitation Act if it were applicable to his place of work because of his employer's receipt of or benefit from Federal financial assistance. Federal financial assistance is defined at 10 CFR 4.4(d) and means essentially the provision by the Federal Government of any funds or personnel or property free of charge or at reduced rates. The Commission does not provide any Federal financial assistance to nuclear power reactor licensees. On the contrary, the Commission charges power reactor licensees for the regulatory services it renders (see 10 CFR Parts 170 and 171). Whether or not other Federal agencies provide such assistance is not known to the Commission. Each licensee implementing the Commission's fitness-for-duty rule will need to determine for itself whether it is receiving such assistance.

18.2.3 *Preemption of State and Local Laws.* The Atomic Energy Act of 1954, as amended, preempts to the Federal Government the field of regulation of nuclear power reactors in all matters pertaining to radiological safety of operation. See 10 CFR 8.4, *Pacific Gas and Electric Co.*, v. *State Energy Resources Conservation and Development Comm.*, 461 U.S. 190 (1983). However, State laws on possession, sale or use of controlled substances and alcohol were enacted with broad social goals in mind rather than radiological safety. Thus, such laws would not be preempted. There would be preemption in the rare case where a State sought to control fitness-for-duty of nuclear plant employees for radiological safety purposes or a State law made compliance with NRC's fitness-for-duty rule difficult or impossible.

18.2.4 *Appeal Procedure.* The Commission believes that an appeal or review procedure with respect to positive alcohol or drug determinations is needed because elementary fairness to the adversely affected individual will help assure employee cooperation in the implementation of the licensee's program. Such cooperation should contribute to successful implementation of the rule. Fairness is represented in the rule by the employee assistance program, the appeal procedure, and the protection of information. Therefore, the appeal procedure is retained, but modified to replace reference to due process with reference to impartiality and objectivity and removal of reference to collective bargaining agreements. Because the focus of the rule is on fitness for unescorted access and not directed at an employment relationship, and because the licensee will be making the access determination based on fitness-for-duty for all persons needing unescorted access, whether they are permanent employees, temporary employees or contractor employees, the procedure is not being limited to permanent employees of the licensee. The Commission notes, however, that in union plants the review procedure covers drug and alcohol issues subject to collective bargaining and that the removal of the reference to collective bargaining agreements in the rule does not preclude bargained for procedures, including binding arbitration, from being employed in resolving disputes over fitness-for-duty determinations. The allowance of an internal management review is discretionary only, and not mandatory except in the absence of any other procedure.

18.2.5 *Protection of Information.* It is not the Commission's intention that results of testing be routinely available to local law enforcement agencies except under court order since the test result does not, in and of itself, demonstrate whether the use of the drug or alcohol was on-site or off-site, legal or illegal. The Commission is, however, firmly convinced that on-site criminal conduct, such as sale or possession of illegal substances, not be protected by the Commission's rule. The Commission agrees that the individual to whom the information pertains should be able to see the records in which the information is contained. The Commission also agrees that such records should be available to an arbitrator, or other adjudicator who is being asked to resolve a fitness-for-duty dispute, provided the records are relevant to the particular dispute. Section 26.29 has been modified to clarify its application accordingly.

With regard to 42 CFR Part 2, it is the Commission's conclusion that it has no relationship to the Commission's rule. 42 CFR Part 2 comprises the regulations of the Department of Health and Human Services implementing Section 408 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 290 et. seq.). It states the rules for maintaining confidentiality of patient records for persons in drug or alcohol abuse prevention and treatment programs regulated by or receiving assistance from the United States Government. First, the Commission is providing no assistance to any such program in the private sector. Second, it is not regulating such a program. The requirement for an employee assistance program does not mandate a treatment program that would fall under the regulations in 42 CFR Part 2. As noted in the response to the issue of preemption, the employee assistance program is not a preempted area. Its content is open to bargaining and the application of other nonconflicting State laws. Further,

licensees are not precluded from referring employees to treatment programs to which the HHS rules might apply as long as the minimum program required by section 26.25 is provided by the licensee. In that case outside patient records would be totally separate from records required by 10 CFR Part 26 and would be protected according to other applicable rules.

18.2.6 *Collective Bargaining Rights.* According to Memorandum GC 87–5, issued by the General Counsel of the National Labor Relations Board on September 8, 1987, drug or alcohol testing for current employees and job applicants is a mandatory subject of collective bargaining and that the implementation of a drug or alcohol testing program is a substantial change in working conditions. Although the Commission's rule requires a drug and alcohol testing program and sets certain standards for it, the rule is not one directed at labor relations, but rather at nuclear safety. The Commission's rule applies equally to union and nonunion workers. It does not affect, even indirectly, the right of self-organization provided by the National Labor Relations Act. The rule does not preclude collective bargaining over issues in drug or alcohol testing programs that are not addressed by it. In the Commission's view, its rule and the opinion of the NLRB General Counsel are compatible documents. See, *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724, 755 (1985).

18.2.7 *Employee Assistance Program.* The authority statement for the rule states that it is promulgated under Section 161, among others, of the Atomic Energy Act. Included within Section 161 is section 161i(3) which gives the Commission authority to promulgate rules to govern any activity authorized pursuant to the Atomic Energy Act, including operation of facilities, to protect health and safety. The employee assistance program required by the rule is an incremental addition to safety by giving persons with fitness-for-duty problems a nonthreatening avenue to resolve those problems, thus removing a potential for compromising the safety of operation of a nuclear power reactor. In the Commission's view the employee assistance program can be incorporated in a Commission rule under the broad scope of Section 161 of the Atomic Energy Act.

18.2.8 *Administrative Procedures for Alcohol.* Under the Administrative Procedure Act (5 U.S.C. 553) the Commission is obligated to provide in its notice of proposed rulemaking either the terms or substance of the proposed rule or a description of the subject and issues involved. With respect to alcohol, the proposed rule specifically included it in the scope of the licensees' fitness-for-duty programs (§ 26.20). The performance objectives are applicable to any substance, legal or illegal, that can adversely affect a person's ability to perform. There is no doubt that alcohol is such a substance. The rule text did not, however, include prescriptive requirements for alcohol. However, the Commission expressly asked for comment on the extent to which guidance should be given as to alcohol and prescription drugs. Standards for blood alcohol content were extensively discussed in the Statement of Considerations along with a Commission request for comment on whether the Commission should prescribe a cutoff level for alcohol. Thus, the notice of proposed rulemaking clearly covered alcohol both in the terms of the proposed rule and in describing in some detail the subject and issues involved. The public was well advised that alcohol testing was a subject within the rulemaking and that the Commission expected to resolve basic issues regarding testing for alcohol in the comment period on the proposed rule. Therefore, the inclusion in the final rule of basic additional requirements for alcohol testing is, in the Commission's view, well within the scope of the proposal. There is no requirement that the additional rule text dealing with alcohol testing be published for separate comment, and not as part of the final rule.

19.0 Costs/Benefits

19.1 Summary of Comments

Several commenters stated that the NRC should justify the rulemaking under the provisions of § 50.109(a)(3), however, no commenters supported the alternative that a backfitting analysis is not necessary under the provisions of § 50.109(a)(ii).

Several commenters said that the estimated costs in the Backfit Analysis were substantially underestimated in the following cost element areas: costs to administer the testing and training programs, particularly the estimate of the numbers of additional staff that would be necessary to administer the program; length of time estimated for individual employee training, both initial and refresher; time to take a test between leaving and returning to work area; added cost of using HHS certified laboratories and quality control measures; and, costs to conduct background checks.

In addition to these comments, one person, whose comments were included as enclosures by two respondents from one union, contended that: the number of persons that would be tested is underestimated and did not include contractor personnel; incremental costs are incorrect because not all plants have fully developed programs; average life of plants should be 40 years rather than 25; use of 10 percent discount rate is unrealistic; and, costs associated with alcohol, legal drug use, and other kinds of performance impairment were ignored.

This commenter also contends that: written policies and procedures and labor contract modifications involve recurring as well as initial costs; employee turnover needs to be factored into training and testing; costs of employee assistance programs do not include medical and counseling staff, training materials, and medical testing and treatment; costs of legal challenges resulting from the program omitted awards of back pay and/or damages and underestimated volume of appeals; and, indirect costs to workers from false positives (lost jobs or wages, humiliation, etc.) are not included.

In addition to these cost comments, one person, whose comments were included as enclosures by two respondents from one union, contended that benefits are overestimated and not documented. In particular, the commenter challenged: benefits of reduction in lost productivity due to employees being unfit for duty; the nexus between use of illegal drugs and impairment of work performance; and, reduction in insurance rates resulting from more comprehensive drug testing.

19.2 Summary of Responses

The NRC agrees with the comments that the rulemaking should be justified under the provisions of 10 CFR 50.109 (a)(3). The Backfit Analysis has been modified based on consideration of the above cost comments as follows:

19.2.1 *Cost to Administer the Testing and Training Programs.* Staff agrees and has adjusted the cost estimate to include the costs of:

a. Additional personnel to administer the testing and training programs;

b. One person for program administration and recordkeeping;

c. One person for collection and processing of specimens; and

d. A Medical Review Officer.

Miscellaneous costs have also been increased to better reflect the costs of forms and record development, and the costs of protected storage for records.

19.2.2 *Length of Time for Individual Training.* Based on the comments, the estimate of training costs has been adjusted to reflect the following:

(a) At least one hour of initial training for *all* employees;

(b) At least four *additional* hours of initial training for supervisors.

19.2.3 *Time to Take a Test.* Several commenters noted that the estimate of 30 minutes of an employee's lost productive time is too low. Lost productive time can include time to secure and restart work in progress and travel between the employee's work station and the specimen collection station. The Backfit Analysis estimate was based on an assumption of 15 minutes for travel to and from the collection site and 15 minutes at the collection station. This was based on the assumption that the majority of employees tested would have work stations within the protected area, and that at most sites the collection station would be efficiently located in or near the protected area to accommodate the large number of tests to be conducted. Also, the staff had assumed that after selecting an individual for testing on a given day, selection of when the test will be conducted that day would take into account holding down lost production time. Staff discussed these assumptions with licensees who have been conducting testing. Some suggested 90 minutes might be appropriate. Other licensees questioned said that 30 minutes is adequate, but that longer times could result from administrative inefficiencies. Based on the comments and the further discussions the estimated time has been increased to 60 minutes.

19.2.4 *Added Cost of Using HHS-Certified Laboratories and Quality Control Measures.* Staff reexamined the cost estimates of initial and confirmatory tests by contacting three laboratories to determine their charges for initial screening and confirmatory tests. Prices quoted were $16, $17, $20, and $25 per initial test, and $50, $65, and $75 per confirmatory test. The lab that was on the high end for initial test cost was on the low end for confirmatory test cost, and had two prices, which depended on the number of samples in the contract. It is speculative to assess whether the labs contacted would have to undergo any additional expenditures to be so certified and whether they would pass such costs on to their customers or would absorb those costs to remain competitive. Costs could go down due to economies of scale, but could go up initially due to increased demand for certified labs exceeding the supply. Staff sees no compelling reason to change the Backfit Analysis cost estimates of $20 per initial screening and $75 per confirmatory test.

An additional cost of quality control is the blind samples to be included along with the employee specimens. The Backfit Analysis included a cost to the utilities of $50 per blind performance test specimen. This cost is in addition to the cost of initial screening and confirmatory tests on these specimens. Staff believes that this is a reasonable representation of the quality control costs that will be incurred, and has made no change to this cost.

19.2.5 *Costs to Conduct Background Checks.* The staff disagrees that there is a need to include the costs of conducting background checks in the incremental cost estimate. Industry has already committed to these background checks through NUMARC in its Access Authorization Program, and thus costs associated with background checks would be expended regardless of whether or not they were required by the Fitness-For-Duty Rule.

19.2.6 *Number of Persons to be Tested.* The Backfit Analysis assumed an average of 1500 employees and contractors would be tested randomly at each plant. This estimate was based on experience with the fingerprint cards submitted to the NRC in compliance with 10 CFR 73.57, which requires these cards to be submitted for all persons granted unescorted access to the protected area. This is the same population as would be covered by the Fitness-For-Duty Rule. After receiving the comments, staff checked these estimates with several licensees and was satisfied that the estimate is appropriate. Staff disagrees that any change is needed to this element of the cost estimate.

19.2.7 *Incremental Costs.* The comment that not all plants have fully developed programs would be inconsistent with full implementation of industry commitments to follow the EEI guidelines. Any costs incurred because commitments have not been met are considered costs for corrective action and not an impact of the present rulemaking.

19.2.8 *Average Life of Plants.* The NRC issues licenses with a 40 year limit. For many plants this time starts at the date of the construction permit, resulting in 30 years remaining for operation. Some plants are being licensed for 40 years from the date of the operating license, resulting in a longer operating period. Some plants are just beginning their operations while others have already been operating under license for many years. Whether the useful life of some will be extended through license renewal is somewhat speculative and has not been considered. However, the effect on the total cost will be small in any event because costs beyond 25 years contribute little to the total cost in the present worth approach the NRC is using for its cost estimates.

19.2.9 *Use of 10 Percent Discount Rate.* The NRC uses a 10 percent discount rate in its regulatory impact analyses to be consistent with applicable OMB guidance. Because of concerns that this rate may be unrealistic at the present time, the NRC also shows the costs associated with a perhaps more realistic 5 percent discount rate.

19.2.10 *Costs Associated with Other Performance Impairments.* Staff disagrees that any change to the Backfit Analysis is needed for these costs. Activities associated with preventing alcohol abuse, legal drug use, and other kinds of performance impairment consist of training, testing and employee assistance programs. The costs assumed for these cost elements already cover these activities.

19.2.11 *Recurring Costs.* The staff disagrees that any change to the Backfit Analysis is needed for recurring costs of written procedures and contract modifications. Staff agrees that licensees incur recurring costs for periodic revision to these documents, but sees no significant difference to these recurring costs attributable to the Fitness-For-Duty Rule. Costs of periodic revisions would accrue even without the Fitness-For-Duty Rule. Furthermore, only the costs for compliance with the rule need be considered, not costs of elective changes. The Backfit Analysis contains only the one time cost to modify these documents to meet the rule requirements.

19.2.12 *Employee Turnover.* One commenter noted that the NRC seemed to assume an employee turnover rate of zero. Staff recognizes that newly hired workers also would need orientation training, but considers this to not add to the incremental costs because such training is already part of the industry's existing fitness-for-duty programs. Staff considers the one time cost for current employees to be an additional cost beyond the current industry fitness-for-duty costs because the revisions to the industry program at many plants will require retraining of existing staff in these new procedures and rules of employment insofar as they differ from existing fitness-for-duty procedures and rules of employment. Staff disagrees that any change to the incremental costs is needed for employee turnover.

19.2.13 *Costs of Employee Assistance Programs.* Staff agrees that the costs of medical and counseling staff, training materials, and medical testing and treatment were underestimated, and has revised the Backfit Analysis to include additional personnel to administer the testing and training programs, in addition to the additional employee assistance program staff provided for in the draft analysis.

19.2.14 *Costs of Legal Challenges.* Staff agrees that there may be some costs associated with these legal challenges, but has no basis for assessing these costs. Attention to quality controls, whose costs were included, should serve to minimize these legal costs.

19.2.15 *Indirect Costs to Workers from False Positives.* The program has been designed to essentially eliminate false positives by use of diverse state of the art testing procedures and quality controls, including the use of certified laboratories, blind samples, chains of custody, and retention of portions of specimens for retesting. The staff agrees that the costs to an individual could be substantial should such an event occur but has not included these indirect costs in a quantitative manner for lack of a means for estimating them fairly. The NRC has considered these indirect costs in a qualitative sense, and has determined that the benefits warrant any such indirect costs (which are highly unlikely) in addition to the quantified direct costs.

19.2.16 *Benefits Overestimated.* Benefits are described in Items 3 and 4 of the Backfit Analysis. The latter included the statement that, in addition to the more important benefits of preventing unacceptable risk to the public from radiological releases, benefits will likely accrue to licensees from the potential reduction in absenteeism, lost worker productivity, medical and insurance costs, and plant downtime. Staff agrees that these claimed benefits have not been quantified or documented. Staff did not intend to imply that the cost reductions associated with these benefits would outweigh the costs of implementation of the Fitness-For-Duty Program, only that these benefits would exist and would serve to somewhat offset the expenses of the program. Lack of quantification of these benefits tends to make the Backfit Analysis cost increase estimates conservative.

With respect to the relationship of illegal drugs and impairment of work performance, see discussion under Item 3, Impairment *vs* Reliability, above, and NUREG/CR 5227, "Fitness-For-Duty in the Nuclear Power Industry: A Review of the Technical Issues."

Summary of Significant Changes From the Proposed Rule

The NRC amended several sections of the proposed rule in response to comments received from the public on the issues and in response to questions raised in the Notice of Proposed Rulemaking. The following is a summary of the significant changes.

The scope of the rule was amended to include power reactors under construction and to extend the date for implementation of all requirements to 180 days after the effective date of the rule.

The definition of "confirmed positive test" was amended to clarify that the test is not a confirmed positive until the Medical Review Officer has reviewed the test results. The Medical Review Officer's review must be completed and licensee management notified within 10 days of the initial presumptive positive screening test.

The definition of "suitable inquiry" was amended to clarify that a best-effort verification of employment history is intended. A conforming amendment was made to the management actions section that required the inquiry.

The general performance objectives were amended to clearly show that the reliability and trustworthiness of nuclear power plant personnel must also be assured.

The requirements for written policies and procedures were amended to include a prohibition against the consumption of alcohol prior to and during work, and the requirement to address situations where a person has been called in to perform unscheduled work.

The requirements for training of escorts have been amended to clarify NRC's intent that escorts need not be trained as supervisors.

The period in which a test must be performed prior to the initial granting of unescorted access was specified as 60 days.

The random testing rate was established as 100 percent per year.

The basis for for-cause tests was clarified.

NRC testing guidelines modeled after the HHS Guidelines, have been developed as the standards for the collection, protection, and testing of specimens for drugs and alcohol.

Licensees will be required to certify to the NRC that their fitness-for-duty programs have been implemented.

Testing laboratories shall be laboratories certified by the Department of Health and Human Services.

A requirement has been added to limit access to the results of preliminary tests.

Tests for alcohol are required to be performed in conjunction with other substance tests. Tests are to be administered by a breath analysis. A confirmatory test may be done with another breath measurement instrument, or if demanded by the person being tested, by gas chromatography analysis of blood.

The requirements for management actions were revised to add the use of alcohol which resulted in on-duty impairment as a subject of the inquiry to previous employers.

The requirement for making available information concerning prior violations of a fitness-for-duty program was amended to include a requirement that the inquiry be supported by a signed release from the individual being investigated.

The frequency of unannounced tests following reinstatement was amended to require more frequent testing for the first four months.

A requirement was added to the section on management actions for licensees to impose sufficient sanctions for alcohol. prescription drugs and over-the-counter drugs to deter substance substitution.

The appeals process requirements were clarified.

The requirements to protect information have been amended to clarify that personal information can be disclosed to persons deciding matters on review or appeal, to persons pursuant to a court order, and to auditors (in addition to those listed in the proposed rule).

Records retention periods have been changed to five years.

A requirement was added for licensees to periodically submit program performance data.

Reporting requirements have been amended to include abuse of alcohol onsite by a licensed reactor operator or supervisory personnel.

The requirement to maintain a copy of the audit report onsite has been deleted.

Modification of Enforcement Policy

The Commission is modifying its General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C (Enforcement Policy) to reflect the Commission's new rule on Fitness-For-Duty, 10 CFR Part 26. The changes to the Enforcement Policy are being published concurrently with the new rule.

The modifications to the Enforcement Policy are being made in Supplement VII "Miscellaneous Matters" to provide

examples of violations of fitness-for-duty requirements. The examples are A.6, B.6, B.7, B.8, C.6, C.7, C.8, C.9, D.4, D.5, and E.4. As with the examples in the other Supplements to the Enforcement Policy, the new examples are neither controlling nor exhaustive nor do they establish new requirements. The examples are to be used as guidance in considering the severity levels of violations of requirements.

In developing the examples, the Commission notes that it is not the unfit person that establishes the violation but rather the licensee's failures, including those of its contractors and vendors, that create violation. For example, if the licensee has effectively implemented its fitness-for-duty program meeting NRC requirements and, based on behavior observation, identifies and removes a person not fit for duty, there may not be a regulatory violation.

The example for Severity Level I is of very significant concern because it represents the failure to implement a fitness-for-duty program. This example would be applicable to a situation where essentially the licensee does not have a program in place.

The examples for Severity Level II are also very significant because they involve the failure to take action when there is the potential to have a direct impact on safety-related activities.

The examples for Severity Level III are significant because they represent significant individual violations or significant breakdowns in basic elements of a fitness-for-duty program. Basic elements include important aspects of the program, such as: training, appeals, records, testing integrity, randomness in testing, audits, prescreening, management response, contractor oversight, and employee assistance. A breakdown in the program categorized at a Severity Level III will normally involve more than one signficant failure of a single element or single failures of a number of elements. In addition, a failure to ensure that specimens collected in accordance with 10 CFR Part 26 are not used for purposes other than those provided by the rule without the permission of the tested individual may also be considered a significant violation.

Severity Level IV and V violations are matters which, while requiring correction, are less significant to the overall fitness-for-duty program.

Enforcement in Other Licensed Activities

The Commission notes that this rule applies to 10 CFR Part 50 licensees only, it does not establish standards or criteria to be applied to licensed activities conducted under any other Part of its regulations. This limited application of Part 26 does not mean, however, that the Commission will not respond to fitness-for-duty issues involving other licensees that affect health and safety. Under the Atomic Energy Act of 1954, as amended, and its regulations, the Commission may respond to such cases by the issuance of appropriate orders.

As explained in the Commission's Enforcement Policy (see 53 FR 40027, Thursday, October 13, 1988), the Commission may take enforcement action where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The Commission may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of integrity, competence, fitness for duty, or other matters that may not necessarily be a violation of specific Commission requirements. And, in taking such enforcement action, the Commission may exercise independent discretion as to the standard of fitness for duty to be applied, depending on the circumstances of the case and the significance of the issue to maintaining reasonable assurance in the protection of the public health and safety in the use and possession of nuclear materials. For example, the Commission could take action to modify, revoke or suspend the license of an individually licensed person seen as not fit for duty on standards more strict than provided in Part 26, if necessary to protect the health and safety of the public or other workers. Similarly, the Commission could take appropriate action regarding a materials licensee where an employee was seen as endangering health and safety because he or she was not fit for duty.

Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions.

Supplemental Provisions of the Drug-Free Workplace Act of 1988

In promulgating this rule the Commission has taken note of the fact that the Congress of the United States has recently enacted Subtitle D of Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, enacted November 18, 1988), entitled, "The Drug-Free Workplace Act of 1988." This law requires any person being awarded a Government contract for property or services of a value of $25,000 or more to certify to the contracting agency that it will provide a drug free workplace for the performance of the contract. The precise requirements are in Section 5152 to 5160 of the Anti-Drug Abuse Act. The Commission has compared the requirements of the Drug-Free Workplace Act to the requirements of its rule on Fitness-For-Duty and finds no inconsistency. Any licensee implementing 10 CFR Part 26 who may also be subject to Subtitle D should have no difficulty meeting the supplemental provisions of the latter concerning notification of the contracting agency of convictions of onsite criminal drug activities [Section 5152(a)(1)(D) of the Anti-Drug Abuse Act] for those employees within the scope of a program meeting the provisions of 10 CFR Part 26. Whether or not any licensee subject to 10 CFR Part 26 is also subject to the Drug-Free Workplace Act of 1988 is a question that the Commission cannot answer. Each licensee will have to examine its own contractual relationships with agencies of the United States Government, if any, to ascertain if those contractual relationships are of a kind that call the Drug-Free Workplace Act into play.

Finding of No Significant Environmental Impact: Availability

An environmental assessment was included in the notice of the proposed rulemaking at 53 FR 36822. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements were approved by the Office of Management and Budget (OMB) at the proposed rule stage, approval number 3150–0146. The final rule adds new information collection requirements and increases records retention periods. Therefore, an amended clearance package is being submitted to OMB. The information collection requirements contained in the final rule will not become effective until they are approved by OMB.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch (P-530), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

An analysis of the costs and benefits of the final rule is included in the backfit analysis described below.

Backfit Analysis

Several commenters stated that the NRC should justify the rulemaking under the provisions of § 50.109(a)(3). The NRC agrees, and finds that the rule will provide a substantial increase in the overall protection of public health and safety, and that the direct and indirect costs of implementation are justified in view of the increased protection.

The backfit analysis is available for inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555. Single copies may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This new 10 CFR Part 26 applies to certain owners and operators of civilian nuclear power reactors and their contractors. The companies that own power reactor facilities do not fall within the scope of "small entities" set forth in the Regulatory Flexibility Act or the small business size standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Any costs to the minor number of small entities affected, i.e., contractors, will apply only to those contractor employees working at the nuclear power reactors, and would probably be reimbursed through the contract.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, Waste treatment and disposal.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C 553, the NRC is adopting a new 10 CFR Part 26, and amending 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Appendix C, Supplement VII, is amended by adding example 6 to paragraph A, examples 6, 7, and 8 to paragraph B, examples 6, 7, 8, and 9 to paragraph C, examples 4 and 5 to paragraph D, and example 4 to paragraph E to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement VII—Severity Categories

A. Severity I. * * *

6. Failure to substantially implement the required fitness-for-duty program.[18]

B. Severity II. * * *

6. Failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or to take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. Failure to test for cause when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use; or

8. Deliberate failure of the licensee's Employee Assistance Program to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities.

C. Severity III. * * *

6. Failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning such denials such that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. Failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. Failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program; or

9. Breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10.

D. Severity IV. * * *

4. Isolated failures to meet basic elements of the fitness-for-duty program not involving a Severity Level I, II, or III violation.

5. Failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73.

E. Severity V. * * *

4. Minor violations of fitness-for-duty requirements.

3. Part 26 is added to 10 CFR Chapter I to read as follows:

PART 26—FITNESS FOR DUTY PROGRAMS

General Provisions

Sec.
26.1 Purpose.
26.2 Scope.
26.3 Definitions.
26.4 Interpretations.
26.6 Exemptions.
26.8 Information collection requirements: OMB approval.

General Performance Objectives

26.10 General performance objectives.

Program Elements and Procedures

26.20 Written policy and procedures.
26.21 Policy communications and awareness training.
26.22 Training of supervisors and escorts.
26.23 Contractors and vendors.
26.24 Chemical testing.
26.25 Employee assistance programs (EAP).
26.27 Management actions and sanctions to be imposed.
26.28 Appeals.
26.29 Protection of information.

Inspections, Records and Reports

26.70 Inspections.
26.71 Recordkeeping requirements.
26.73 Reporting requirements.

[18] The examples for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

Sec.

Audits

26.80 Audits.

Enforcement

26.90 Violations.

Appendix A—Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs.

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273) §§ 26.20, 26.21, 26.22, 26.23, 26.24, 26.25, 26.27, 26.28, 26.29 and 26.80 are issued under secs. 161b and i, 68 Stat. 948, and 949 as amended [42 U.S.C. 2201(b) and (i)]; 26.70, 26.71, and 26.73 are issued under sec. 161o, 68 Stat. 950, as amended [42 U.S.C. 2201(o)].

General Provisions

§ 26.1 Purpose.

This Part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures by the licensed nuclear power industry.

§ 26.2 Scope.

(a) The regulations in this Part apply to licensees authorized to operate a nuclear power reactor. Each licensee shall implement a fitness-for-duty program which complies with this Part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to protected areas, and to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures. The regulations in this Part do not apply to NRC employees, or to law enforcement personnel or offsite emergency fire and medical response personnel while responding on-site.

(b) Certain regulations in this Part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with sections 26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance programs, imposition of sanctions, appeal procedures, the protection of information, and recordkeeping.

(c) The requirements in this Part must be implemented by each licensee authorized to construct or operate a nuclear power reactor no later than (insert date 180 days after the effective date of the final rule).

§ 26.3 Definitions.

"Aliquot" means a portion of a specimen used for testing.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the initial screening test in order to ensure reliability and accuracy. For determining blood alcohol levels, a "confirmatory test" means a second test using another breath alcohol analysis device. Further confirmation upon demand will be by gas chromatography analysis of blood.

"Confirmed positive test" means the result of a confirmatory test that has established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cut-off level, and that has been deemed positive by the Medical Review Officer (MRO) after evaluation. A "confirmed positive test" for alcohol can also be obtained as a result of a confirmation of blood alcohol levels with a second breath analysis without MRO evaluation.

"Contractor" means any company or individual with which the licensee has contracted for work or service to be performed inside the protected area boundary, either by contract, purchase order, or verbal agreement.

"Cut-off level" means the value set for designating a test result as positive.

"Follow-up testing" means chemical testing at unannounced intervals, to ensure that an employee is maintaining abstinence from the abuse of drugs or alcohol.

"Illegal drugs" means those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

"Initial or screening tests" means an immunoassay screen for drugs or drug metabolites to eliminate "negative" urine specimens from further consideration or the first breathalyzer test for alcohol. Initial screening may be performed at the licensee's testing facility; a second screen and confirmation testing for drugs or drug metabolites must be conducted by a HHS-certified laboratory.

"Medical Review Officer" means a licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

"Protected area" has the same meaning as in §73.2(g) of this chapter, an area encompassed by physical barriers and to which access is controlled.

"Random test" means a system of unannounced drug testing administered in a statistically random manner to a group so that all persons within that group have an equal probability of selection.

"Suitable inquiry" means best-effort verification of employment history for the past five years, but in no case less than three years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR Part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy.

"Vendor" means any company or individual, not under contract to a licensee, providing services in protected areas.

§ 26.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this Part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 26.6 Exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this Part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 26.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this Part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements

contained in this Part under control number 3150–0146.

(b) The approved information collection requirements contained in this Part appear in §§ 26.20, 26.21, 26.22, 26.23, 26.24, 26.27, 26.29, 26.70, 26.71, 26.73, 26.80 and Appendix A.

(c) The total burden for these recordkeeping requirements is estimated to be 313 hours per site per year. In implementing the recordkeeping requirements the affected licensee shall report to the Commission any comments concerning the accuracy of the estimate and any suggestions for reducing the burden.

General Performance Objectives

§ 26.10 General performance objectives.

Fitness-for-duty programs must:

(a) Provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

(b) Provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this Part; and

(c) Have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances.

Program Elements and Procedures

§ 26.20 Written policy and procedures.

Each licensee subject to this Part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this Part. Each licensee shall retain a copy of the current written policy and procedures as a record until the Commission terminates each license for which the policy and procedures were developed and, if any portion of the policies and procedures are superseded, retain the superseded material for three years after each change. As a minimum, written policies and procedures must address fitness for duty through the following:

(a) An overall description of licensee policy on fitness for duty. The policy must address use of illegal drugs and abuse of legal drugs (e.g., alcohol, prescription and over-the-counter drugs). Written policy documents must be in sufficient detail to provide affected individuals with information on what is expected of them, and what consequences may result from lack of adherence to the policy. As a minimum, the written policy must prohibit the consumption of alcohol—

(1) Within an abstinence period of at least 5 hours preceding any scheduled working tour, and

(2) During the period of any working tour.

Licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness.

(b) A description of programs which are available to personnel desiring assistance in dealing with drug, alcohol, or other problems that could adversely affect the performance of activities within the scope of this Part.

(c) Procedures to be utilized in testing for drugs and alcohol, including procedures for protecting the employee and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.

(d) A description of immediate and follow-on actions which will be taken, and the procedures to be utilized, in those cases where employees, vendors, or contractors assigned to duties within the scope of this Part are determined to have been involved in the use, sale, or possession of illegal drugs; or to have consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess prior to reporting to duty as demonstrated with a test that can be used to determine blood alcohol concentration.

(e) A procedure that will ensure that persons called in to perform an unscheduled working tour are fit to perform the task assigned. As a minimum, this procedure must—

(1) Require a statement to be made by a called-in person as to whether he or she has consumed alcohol within the length of time stated in the pre-duty abstinence policy;

(2) If alcohol has been consumed within this period, require a determination of fitness for duty by breath analysis or other means; and

(3) Require the establishment of controls and conditions under which a person who has been called-in can perform work, if necessary, although alcohol has been consumed. Consumption of alcohol during the abstinence period shall not by itself preclude a licensee from using individuals needed to respond to an emergency.

(f) The Commission may at any time review the licensee's written policy and procedures to assure that they meet the performance objectives of this Part.

§ 26.21 Policy communications and awareness training.

(a) Persons assigned to activities within the scope of this Part shall be provided with appropriate training to ensure they understand—

(1) Licensee policy and procedures, including the methods that will be used to implement the policy;

(2) The personal and public health and safety hazards associated with abuse of drugs and misuse of alcohol;

(3) The effect of prescription and over-the-counter drugs and dietary conditions on job performance and on chemical test results, and the role of the Medical Review Officer;

(4) Employee assistance programs provided by the licensee; and

(5) What is expected of them and what consequences may result from lack of adherence to the policy.

(b) Initial training must be completed prior to assignment to activities within the scope of this Part. Refresher training must be completed on a nominal 12 month frequency or more frequently where the need is indicated. A record of the training must be retained for a period of at least three years.

§ 26.22 Training of supervisors and escorts.

(a) Managers and supervisors of activities within the scope of this Part must be provided appropriate training to ensure they understand—

(1) Their role and responsibilities in implementing the program;

(2) The roles and responsibilities of others, such as the personnel, medical, and employee assistance program staffs;

(3) Techniques for recognizing drugs and indications of the use, sale, or possession of drugs;

(4) Behavioral observation techniques for detecting degradation in performance, impairment, or changes in employee behavior; and

(5) Procedures for initiating appropriate corrective action, to include referral to the employee assistance program.

(b) Persons assigned to escort duties shall be provided appropriate training in techniques for recognizing drugs and indications of the use, sale, or possession of drugs, techniques for recognizing aberrant behavior, and the procedures for reporting problems to supervisory or security personnel.

(c) Initial training must be completed prior to assignment of duties within the scope of this Part and within 3 months after initial supervisory assignment, as applicable. Refresher training must be completed on a nominal 12 month frequency, or more frequently where the

need is indicated. A record of the training must be retained for a period of at least three years.

§ 26.23 Contractors and vendors.

(a) All contractor and vendor personnel performing activities within the scope of this Part for a licensee must be subject to either the licensee's program relating to fitness for duty, or to a program, formally reviewed and approved by the licensee, which meets the requirements of this Part. Written agreements between licensees and contractors or vendors for activities within the scope of this Part must be retained for the life of the contract and will clearly show that—

(1) The contractor or vendor is responsible to the licensee for adhering to the licensee's fitness-for-duty policy, or maintaining and adhering to an effective fitness-for-duty program; which meets the standards of this Part; and

(2) Personnel having been denied access or removed from activities within the scope of this Part at any nuclear power plant for violations of a fitness-for-duty policy will not be assigned to work within the scope of this Part without the knowledge and consent of the licensee.

(b) Each licensee subject to this Part shall assure that contractors whose own fitness-for-duty programs are relied on by the licensee adhere to an effective program, which meets the requirements of this Part, and shall conduct audits pursuant to § 26.80 for this purpose.

§ 26.24 Chemical testing.

(a) To provide a means to deter and detect substance abuse, the licensee shall implement the following chemical testing programs for persons subject to this Part:

(1) Testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities within the scope of this Part.

(2) Unannounced tests imposed in a random manner. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing shall be conducted at a rate equal to at least 100 percent of the workforce.

(3) Testing for-cause, i.e., as soon as possible following any observed behavior indicating possible substance abuse; after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the worker's behavior contributed to the event; or after receiving credible information that an individual is abusing drugs or alcohol.

(4) Follow-up testing on an unannounced basis to verify continued abstention from the use of substances covered under this Part.

(b) Testing for drugs and alcohol must at a minimum, conform to the "Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs," issued by the Nuclear Regulatory Commission and appearing in Appendix A to this rule, hereinafter referred to as the NRC Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels, broader panel of drugs). All requirements in this Part apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines; management actions must be the same as if the individual failed the NRC standards.

(c) Licensees shall test for all substances described in paragraph 2.1(a) of the NRC Guidelines. In addition, licensees may consult with local law enforcement authorities, hospitals, and drug counseling services to determine whether other substances with abuse potential are being used in the geographical locale of the facility and the local workforce. When appropriate, other substances so identified may be added to the panel of substances for testing. Appropriate cutoff limits must be established by the licensee for these substances.

(d) Licensees may conduct initial screening tests of an aliquot prior to forwarding selected specimens to a laboratory certified by the Department of Health and Human Services, provided the licensee's staff possesses the necessary training and skills for the tasks assigned, their qualifications are documented, and adequate quality controls are implemented. Quality control procedures for initial screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially tested as negative. Access to the results of preliminary tests must be limited to the licensee's testing staff, the Medical Review Officer, the Fitness-For-Duty Program Manager, and employee assistance program staff when appropriate.

(e) The Medical Review Officer's review of the test results must be completed and licensee management notified within 10 days of the initial presumptive positive screening test.

(f) All testing of specimens for urine drug testing, except onsite testing under paragraph (d) above, must be performed in a laboratory certified by the U.S. Department of Health and Human Services for that purpose consistent with its standards and procedures for certification. Except for suspect specimens submitted for special processing (Section 2.7(d) of Appendix A), all specimens sent to certified laboratories shall be subject to initial screening by the laboratory and all specimens screened as presumptively positive shall be subject to confirmation testing by the laboratory. Licensees shall submit blind performance test specimens to certified laboratories in accordance with the NRC Guidelines (Appendix A).

(g) Tests for alcohol must be administered by breath analysis using breath alcohol analyses devices meeting evidential standards described in Section 2.7(O)(3) of Appendix A. A breath alcohol content indicating a blood alcohol concentration of 0.04 percent or greater must be a positive test result. The confirmatory test for alcohol shall be done with another breath measurement instrument. Should the person demand further confirmation, the test must be a gas chromatography analysis of blood.

§ 26.25 Employee assistance programs (EAP).

Each licensee subject to this Part shall maintain an employee assistance program to strengthen fitness-for-duty programs by offering assessment, short-term counseling, referral services, and treatment monitoring to employees with problems that could adversely affect the performance of activities within the scope of this Part. Employee assistance programs should be designed to achieve early intervention and provide for confidential assistance. The employee assistance program staff shall inform licensee management when a determination has been made that any individual's condition constitutes a hazard to himself or herself or others (including those who have self-referred).

§ 26.27 Management actions and sanctions to be imposed.

(a) Prior to the initial granting of unescorted access to a protected area or the assignment to activities within the scope of this Part to any person, the licensee shall obtain a written statement from the individual as to whether activities within the scope of this Part were ever denied the individual. The

licensee shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past, tested positive for drugs or use of alcohol that resulted in on-duty impairment, subject to a plan for treating substance abuse (except for self-referral for treatment), or removed from activities within the scope of this Part, or denied unescorted access at any other nuclear power plant in accordance with a fitness-for-duty policy. If such a record is established, the new assignment to activities within the scope of this Part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph (b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this Part and the circumstances for such denial or removal, including test results, will be made available in response to a licensee's, contractor's, or vendor's inquiry supported by a signed release from the individual. Failure to list reasons for removal or revocation of unescorted access shall be sufficient cause for denial of unescorted access. Temporary access provisions shall not be affected by this Part provided that the prospective worker passes a chemical test conducted according to the requirements of 26.24(a)(1).

(b) Each licensee subject to this Part shall, as a minimum, take the following actions. Nothing herein shall prohibit the licensee from taking more stringent action.

(1) Impaired workers, or those whose fitness may be questionable, shall be removed from activities within the scope of this Part, and may be returned only after determined to be fit to safely and competently perform activities within the scope of this Part.

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within the scope of this Part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this Part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in removal from unescorted access to protected areas and activities within the scope of this Part for a minimum of three years from the date of removal.

(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs while within a protected area of any nuclear power plant must be removed from activities within the scope of this Part. The individual may not be granted unescorted access to protected areas or assigned to activities within the scope of this Part for a minimum of five years from the date of removal.

(4) Persons removed for periods of three years or more under the provisions of paragraphs (b) (2) and (3) of this section for the illegal sale, use or possession of drugs and who would have been removed under the current standards of a hiring licensee, may be granted unescorted access and assigned duties within the scope of this Part by a licensee subject to this Part only when the hiring licensee receives satisfactory medical assurance that the person has abstained from drugs for at least three years. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this Part must be obtained before permitting the individual to perform activities within the scope of this Part. Any person granted unescorted access or whose access is reinstated under these provisions must be given unannounced follow-up tests at least once every month for four months and at least once every three months for the next two years and eight months after unescorted access is reinstated to verify continued abstinence from proscribed substances. Any confirmed use of drugs through this process or any other determination of subsequent involvement in the sale, use or possession of illegal substances must result in permanent denial of unescorted access.

(5) Paragraphs (b) (2), (3), and (4) of this section do not apply to alcohol, valid prescriptions, or over-the-counter drugs. Licensee sanctions for confirmed misuse of alcohol, valid prescription, and over-the-counter drugs shall be sufficient to deter abuse of legally obtainable substances as a substitute for abuse of proscribed drugs.

(c) Refusal to provide a specimen for testing and resignation prior to removal for violation of company fitness-for-duty policy concerning drugs must be recorded as removals for cause. These records must be retained for the purpose of meeting the requirements of § 26.27(a).

(d) If a licensee has a reasonable belief that an NRC employee may be under the influence of any substance, or otherwise unfit for duty, the licensee may not deny access but shall escort the individual. In any instance of this occurrence, the appropriate Regional Administrator must be notified immediately by telephone. During other than normal working hours, the NRC Operations Center must be notified.

§ 26.28 Appeals.

Each licensee subject to this Part, and each contractor or vendor implementing a fitness-for-duty program under the provisions of § 26.23, shall establish a procedure for licensee and contractor or vendor employees to appeal a positive alcohol or drug determination. The procedure must provide notice and an opportunity to respond and may be an impartial internal management review. A licensee review procedure need not be provided to employees of contractors or vendors when the contractor or vendor is administering his own alcohol and drug testing.

§ 26.29 Protection of information.

(a) Each licensee subject to this Part, who collects personal information on an individual for the purpose of complying with this Part, shall establish and maintain a system of files and procedures for the protection of the personal information. This system must be maintained until the Commission terminates each license for which the system was developed.

(b) Licensees, contractors, and vendors shall not disclose the personal information collected and maintained to persons other than assigned Medical Review Officers, other licensees or their authorized representatives legitimately seeking the information as required by this Part for unescorted access decisions and who have obtained a release from current or prospective employees or contractor personnel, NRC representatives, appropriate law enforcement officials under court order, the subject individual or his or her representative, or to those licensee representatives who have a need to have access to the information in performing assigned duties, including audits of licensee's, contractor's, and vendor's programs, to persons deciding matters on review or appeal, and to other persons pursuant to court order. This section does not authorize the licensee, contractor, or vendor to

withhold evidence of criminal conduct from law enforcement officials.

Inspections, Records, and Reports

§ 26.70 Inspections.

(a) Each licensee subject to this Part shall permit duly authorized representatives of the Commission to inspect, copy, or take away copies of its records and inspect its premises, activities, and personnel as may be necessary to accomplish the purposes of this Part.

(b) Written agreements between licensees and their contractors and vendors must clearly show that the—

(1) Licensee is responsible to the Commission for maintaining an effective fitness-for-duty program in accordance with this Part; and

(2) Duly authorized representatives of the Commission may inspect, copy, or take away copies of any licensee, contractor, or vendor's documents, records, and reports related to implementation of the licensee's, contractor's, or vendor's fitness-for-duty program under the scope of the contracted activities.

§ 26.71 Recordkeeping requirements.

Each licensee subject to this Part and each contractor and vendor implementing a licensee approved program under the provisions of § 26.23 shall—

(a) Retain records of inquiries conducted in accordance with § 26.27(a), that result in the granting of unescorted access to protected areas, until five years following termination of such access authorizations;

(b) Retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the related personnel actions for a period of at least five years;

(c) Retain records of persons made ineligible for three years or longer for assignment to activities within the scope of this Part under the provisions of § 26.27(b) (2), (3), (4) or (c), until the Commission terminates each license under which the records were created; and

(d) Collect and compile fitness-for-duty program performance data on a standard form and submit this data to the Commission within 60 days of the end of each 6 month reporting period (January-June and July-December). The data for each site (corporate and other support staff locations may be separately consolidated) shall include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by population and type of test (i.e., pre-badging, random, for-cause, etc.); substances identified; summary of management actions; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for three years.

§ 26.73 Reporting requirements.

(a) Each licensee subject to this Part shall inform the Commission of significant fitness-for-duty events including:

(1) Sale, use, or possession of illegal drugs within the protected area and,

(2) Any acts by any person licensed under 10 CFR Part 55 to operate a power reactor or by any supervisory personnel assigned to perform duties within the scope of this Part—

(i) Involving the sale, use, or possession of a controlled substance,

(ii) Resulting in confirmed positive tests on such persons,

(iii) Involving use of alcohol within the protected area, or

(iv) Resulting in a determination of unfitness for scheduled work due to the consumption of alcohol.

(b) Notifications must be made to the NRC Operations Center by telephone within 24 hours of the discovery of the event by the licensee.

(c) Fitness-for-duty events shall be reported under this section rather than reported under the provisions of § 73.71.

(d) By (insert date 180 days after the effective date of the final rule) each licensee shall certify to the NRC that it has implemented a fitness-for-duty program that meets the requirements of 10 CFR Part 26. The certification shall describe any licensee cut-off levels more stringent than those imposed by this Part.

Audits

§ 26.80 Audits.

(a) Each licensee subject to this Part shall audit the fitness-for-duty program nominally every 12 months. In addition, audits must be conducted, nominally every 12 months, of those portions of fitness-for-duty programs implemented by contractors and vendors. Licensees may accept audits of contractors and vendors conducted by other licensees and need not re-audit the same contractor or vendor for the same period of time. Each sharing utility shall maintain a copy of the audit report, to include findings, recommendations and corrective actions. Licensees retain responsibility for the effectiveness of contractor and vendor programs and the implementation of appropriate corrective action.

(b) Audits must focus on the effectiveness of the program and be conducted by individuals qualified in the subject(s) being audited, and independent of both fitness-for-duty program management and personnel directly responsible for implementation of the fitness-for-duty program.

(c) The result of the audit, along with recommendations, if any, must be documented and reported to senior corporate and site management. The resolution of the audit findings and corrective actions must be documented. These documents must be retained for three years. NRC Guidelines require licensee audits of HHS-certified laboratories as described in Appendix A.

Enforcement

§ 26.90 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) Any regulation or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act of 1954, for violations of—

(1) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these Sections;

(4) Any term, condition, or limitation of any license issued under these Sections; or

(5) Any provisions for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

(c) Any person who willfully violates any provision of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the requirements of the Act, include regulations under this Part, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Appendix A—Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs

Subpart A—General

1.1 Applicability
1.2 Definitions

Subpart B—Scientific and Technical Requirements

2.1 The Substances
2.2 General Administration of Testing

Subpart A—General

1.1 Applicability.

(1) These guidelines apply to licensees authorized to operate nuclear power reactors.

(2) Licensees may set more stringent cut-off levels than specified herein or test for substances other than specified herein and shall inform the Commission of such deviation within 60 days of implementing such change. Licensees may not deviate from the provisions of these guidelines without the written approval of the Commission.

(3) Only laboratories which are HHS-certified are authorized to perform urine drug testing for NRC licensees, vendors, and licensee contractors.

1.2 Definitions.

For the purposes of this part, the following definitions apply:

"Aliquot." A portion of a specimen used for testing.

"BAC." Blood alcohol concentration (BAC), which can be measured directly from blood or derived from a measure of the concentration of alcohol in a breath specimen, is a measure of the mass of alcohol in a volume of blood such that an individual with 100 mg of alcohol per 100 ml of blood has a BAC of 0.10 percent.

"Commission." The U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Chain-of-custody." Procedures to account for the integrity of each specimen by tracking its handling and storage from the point of specimen collection to final disposition of the specimen.

"Collection site." A place designated by the licensee where individuals present themselves for the purpose of providing a specimen of their urine, breath, and/or blood to be analyzed for the presence of drugs or alcohol.

"Collection site person." A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the specimen(s) provided by those individuals. A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required herein. In any case where: (a) a collection is observed or (b) collection is monitored by nonmedical personnel, the collection site person must be a person of the same gender as the donor.

"Confirmatory test." A second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, phencyclidine). For determining blood alcohol levels, a "confirmatory test" means a second test using another breath alcohol analysis device. Further confirmation upon demand will be by gas chromatography analysis of blood.

"Confirmed positive test." The result of a confirmatory test that has established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cut-off level, and that has been deemed positive by the Medical Review Officer (MRO) after evaluation. A "confirmed positive test" for alcohol can also be obtained as a result of a confirmation of blood alcohol levels with a second breath analysis without MRO evaluation.

"HHS-certified laboratory." A urine and blood testing laboratory that maintains certification to perform drug testing under the Department of Health and Human Services (HHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11970).

"Illegal drugs." Those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

"Initial or screening test." An immunoassay screen for drugs or drug metabolites to eliminate "negative" urine specimens from further consideration or the first breathalyzer test for alcohol.

"Licensee's testing facility." A drug testing facility operated by the licensee or one of its vendors or contractors to perform the initial testing of urine samples and to perform initial breath tests for alcohol. Such a testing facility is optional and not required to maintain HHS certification under this part.

"Medical Review Officer." A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

"Permanent record book." A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

"Reason to believe." Reason to believe that a particular individual may alter or substitute the urine specimen.

"Split sample." A portion of a urine specimen that may be stored by the licensee to be tested in the event of appeal.

Subpart B—Scientific and Technical Requirements

2.1 The Substances.

(a) Licensees shall, as a minimum, test for marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol for pre-access, for-cause, random, and follow-up tests.

(b) Licensees may test for any illegal drugs during a for-cause test, or analysis of any specimen suspected of being adulterated or diluted through hydration or other means.

(c) Licensees shall establish rigorous testing procedures that are consistent with the intent of these guidelines for any other drugs not specified in these guidelines for which testing is authorized under 10 CFR 26, so that the appropriateness of the use of these substances can be evaluated by the Medical Review Officer to ensure that individuals granted unescorted access are fit for maintaining access to and for performing duties in protected areas.

(d) Specimens collected under NRC regulations requiring compliance with this part may only be designated or approved for testing as described in this part and shall not be used to conduct any other analysis or test without the permission of the tested individual.

(e) This section does not prohibit procedures reasonably incident to analysis of a specimen for controlled substances (e.g., determination of pH on tests for specific gravity, creatinine concentration, or presence of adulterants).

2.2 General Administration of Testing.

The licensee testing facilities and HHS-certified laboratories described in this part shall develop and maintain clear and well-documented procedures for collection, shipment, and accession of urine and blood specimens under this part. Such procedures shall include, as a minimum, the following:

(a) Use of a chain-of-custody form. The original shall accompany the specimen to the HHS-certified laboratory. A copy shall accompany any split sample. The form shall be a permanent record on which is retained identity data (or codes) on the employee and information on the specimen collection process and transfers of custody of the specimen.

(b) Use of a tamperevident sealing system designed in a manner such that the specimen container top can be sealed against undetected opening, the container can be identified with a unique identifying number identical to that appearing on the chain-of-custody form, and space has been provided to initial the container affirming its identity. For purposes of clarity, this requirement assumes use of a system made up of one or more pre-printed labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which one or more specimens and associated paperwork may be transferred and which can be sealed and initialled to prevent undetected tampering.

(d) Written procedures, instructions, and training shall be provided as follows:

(1) Licensee collection site procedures and training of collection site personnel shall

clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the individual tested, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A non-medical collection site person shall receive training in compliance with this appendix and shall demonstrate proficiency in the application of this appendix prior to serving as a collection site person. A medical professional, technologist, or technician licensed or otherwise approved to practice in the jurisdiction in which collection occurs may serve as a collection site person if that person is provided the instructions described in 2.2(3) and performs collections in accordance with those instructions.

(3) Collection site persons shall be provided with detailed, clearly-illustrated, written instructions on the collection of specimens in compliance with this part. Individuals subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(4) The option to provide a blood specimen for confirmatory analysis following a positive breath test shall be specified in the written instructions provided to individuals tested. The instructions shall also state that failure to request a confirmatory blood test indicates that the individual accepts the breath test results.

2.3 Preventing Subversion of Testing.

Licensees shall carefully select and monitor persons responsible for administering the testing program (e.g., collection site persons, laboratory technicians, specimen couriers, and those selecting and notifying personnel to be tested), based upon the highest standards for honesty and integrity, and shall implement measures to ensure that these standards are maintained. As a minimum, these measures shall ensure that the integrity of such persons is not compromised or subject to efforts to compromise due to personal relationships with any individuals subject to testing.

As a minimum:

(1) Supervisors, co-workers, and relatives of the individual being tested shall not perform any collection, assessment, or evaluation procedures.

(2) Appropriate background checks and psychological evaluations shall be completed prior to assignment of any tasks associated with the administration of the program, and shall be conducted at least once every three years.

(3) Persons responsible for administering the testing program shall be subjected to a behavioral observation program designed to assure that they continue to meet the highest standards for honesty and integrity.

2.4 Specimen Collection Procedures.

(a) "Designation of Collection Site." Each drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine or blood specimens to a drug testing laboratory. A properly equipped mobile facility that meets the requirements of this part is an acceptable collection site.

(b) "Collection Site Person." A collection site person shall have successfully completed training to carry out this function. In any case where the collection of urine is observed, the collection site person must be a person of the same gender as the donor. Persons drawing blood shall be qualified to perform that task.

(c) "Security." The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen. Security procedures shall provide for the designated collection site to be secure. If a collection site facility cannot be dedicated solely to drug and alcohol testing, the portion of the facility used for testing shall be secured during that testing.

(1) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present, and that undetected access (e.g., through a rear door not in the view of the collection site person) is impossible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the individual or distraction of the collection site person.

(2) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed container is transferred for shipment, the following minimum procedures shall apply: The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in a mailer or secured for shipment. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person. These minimum procedures shall apply to the mailing of specimens to licensee testing facilities from collection sites (except where co-located) as well as to the mailing of specimens to HHS-certified laboratories. As an option, licensees may ship several specimens via courier in a locked or sealed shipping container.

(d) "Chain-of-Custody." Licensee chain-of-custody forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine and blood specimens from one authorized individual or place to another shall always be accomplished through chain-of-custody procedures. Every effort shall be made to minimize the number of persons handling the specimens.

(e) "Access to Authorized Personnel Only." No unauthorized personnel shall be permitted in any part of the designated collection site where specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing or shipping container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person, and ensure against any confusion in the identification of specimens, a collection site person shall conduct only one collection procedure at any given time. For this purpose, a collection procedure is complete when the specimen container has been sealed and initialed, the chain-of-custody form has been executed, and the individual has departed the collection site.

(f) "Privacy." Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. For purposes of this appendix the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute a urine specimen:

(1) The individual has presented a urine specimen that falls outside the normal temperature range, and the individual declines to provide a measurement of oral body temperature by sterile thermometer, as provided in paragraph (g)(14) of this appendix, or the oral temperature does not equal or exceed that of the specimen.

(2) The last urine specimen provided by the individual (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 or a creatinine concentration below .2 g/L.

(3) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).

(4) The individual has previously been determined to have used a substance inappropriately or without medical authorization and the particular test is being conducted as a part of a rehabilitation program or on return to service after evaluation and/or treatment for a confirmed positive test result.

(g) "Integrity and Identity of Specimens." Licensees shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure, that a blood sample or breath exhalent tube cannot be substituted or tampered with, and that the information on the specimen container and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that authentic specimens are obtained and correctly identified:

(1) To deter the dilution of urine specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used (undetected) as a source for diluting the specimen.

(2) When an individual arrives at the collection site for a urine or breath test, the collection site person shall ensure that the individual is positively identified as the person selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity

cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive for a urine or breath test at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) After the individual has been positively identified, the collection site person shall ask the individual to sign a consent-to-testing form and to list all of the prescription medications and over-the-counter preparations that he or she can remember using within the past 30 days.

(5) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine, breath, or blood specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments outside of the room in which the blood, breath, or urine sample is collected. The individual may retain his or her wallet.

(6) The individual shall be instructed to wash and dry his or her hands prior to urination.

(7) After washing hands prior to urination, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the urine specimen.

(8) The individual may provide his/her urine specimen in the privacy of a stall or otherwise partitioned areas that allows for individual privacy.

(9) The collection site person shall note any unusual behavior or appearance in the permanent record book and on the chain-of-custody form.

(10) In the exceptional event that a designated collection site is inaccessible and there is an immediate requirement for urine specimen collection (e.g., an accident investigation), a public or on-site rest room may be used according to the following procedures. A collection site person of the same gender as the individual shall accompany the individual into the rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain-of-custody procedures.

(11) Upon receiving a urine specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(13) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(12) After the urine specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(13) Immediately after the urine specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(14) If the temperature of a urine specimen is outside the range of 32.5°–37.7 °C/90.5°–99.8 °F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(15) Immediately after a urine specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(16) All urine specimens suspected of being adulterated or found to be diluted shall be forwarded to the laboratory for testing.

(17) Whenever there is reason to believe that a particular individual may alter or substitute the urine specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person. Where appropriate, measures will be taken to prevent additional hydration.

(18) Alcohol breath tests shall be delayed at least 15 minutes if any source of mouth alcohol (e.g., breath fresheners) or any other substances are ingested (e.g., eating, smoking, regurgitation of stomach contents from vomiting or burping). The collection site person shall ensure that each breath specimen taken comes from the end, rather than the beginning, of the breath expiration. For each screening test, two breath specimens shall be collected from each individual no less than two minutes apart and no more than 10 minutes apart. The test results shall be considered accurate if the result of each measurement is within plus or minus 10 percent of the average of the two measurements. If the two tests do not agree, the breath tests shall be repeated on another evidential-grade breath analysis device. Confirmatory testing is accomplished by repeating the above procedure on another evidential-grade breath analysis device.

(19) If the alcohol breath tests indicates that the individual is positive for a BAC at or above the 0.04 percent cut-off level, the individual may request a confirmatory blood test, at his or her discretion. All vacuum tube and needle assemblies used for blood collection shall be factory-sterilized. The collection site person shall ensure that they remain properly sealed until used. Antiseptic swabbing of the skin shall be performed with a nonethanol antiseptic. Sterile procedures shall be followed when drawing blood and transferring the blood to a storage container; in addition, the container must be sterile and sealed.

(20) Both the individual being tested and the collection site person shall keep urine and blood specimens in view at all times prior to their being sealed and labeled. If a urine specimen is split (as described in Section 2.7(j)) and if any specimen is transferred to a second container, the collection site person shall request the individual to observe the splitting of the urine sample or the transfer of the specimen and the placement of the tamperevident seal over the container caps and down the sides of the containers.

(21) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (h) through (j) of this section.

(22) The collection site person shall place securely on each container an identification label which contains the date, the individual's specimen number, and any other identification information provided or required by the drug testing program. If separate from the labels, the tamperevident seals shall also be applied.

(23) The individual shall initial the identification labels on the specimen containers for the purpose of certifying that it is the specimen collected from him or her.

(i) The individual shall be asked to read and sign a statement on either the chain-of-custody form or in the permanent record book certifying that the specimens identified as having been collected from him or her are in fact the specimen he or she provided.

(ii) The individual shall be provided an opportunity to set forth on the urine chain-of-custody form information concerning medications taken or administered in the past 30 days.

(24) The collection site person shall enter in the permanent record book all information identifying the specimens. The collection site person shall sign the permanent record book next to the identifying information.

(25) A higher level supervisor in the drug testing program shall review and concur in advance with any decision by a collection site person to obtain a urine specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(26) The collection site person shall complete the chain-of-custody forms for both the aliquot and the split sample, if collected, and shall certify proper completion of the collection.

(27) The specimens and chain-of-custody forms are now ready for transfer to the laboratory or the licensee's testing facility. If the specimens are not immediately prepared for shipment, they shall be appropriately safeguarded during temporary storage.

(28) While any part of the above chain-of-custody procedures is being performed, it is essential that the specimens and custody documents be under the control of the involved collection site person. The collection site person shall not leave the collection site in the interval between presentation of the specimen by the individual and securement of the samples with identifying labels bearing the individual's specimen identification numbers and seals initialled by the individual. If the involved collection site person leaves his or her work station momentarily, the specimens and chain-of-custody forms shall be taken with him or her or shall be secured. If the collection site person is leaving for an extended period of time, the specimens shall be packaged for transfer to the laboratory before he or she leaves the site.

(h) "Collection Control." To the maximum extent possible, collection site personnel shall keep the individual's specimen containers within sight both before and after the individual has urinated or provided a breath or blood sample. After the specimen is collected and whenever urine specimens are split, they shall be properly sealed and labeled. A chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the chain-of-custody form each time a specimen is handled or transferred, and every individual in the chain of custody shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(i) "Transportation to Laboratory or Testing Facility." Collection site personnel shall arrange to transfer the collected specimens to the drug testing laboratory or licensee testing facility. To transfer specimens off-site for initial screening and for a second screen and confirmatory analysis of presumptive positive specimens and for transferring suspect specimens to a laboratory for analysis under special processing [Section 2.7(d)], the specimens shall be placed in containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes, padded mailers, or bulk shipping containers with that capability) and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain-of-custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

(j) "Failure to Cooperate." If the individual refuses to cooperate with the urine collection or breath analysis process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen), then the collection site person shall inform the Medical Review Officer and shall document the non-cooperation in the permanent record book and on the specimen custody and control form. The Medical Review Officer shall report the failure to cooperate to the appropriate management. The provision of blood specimens for use to confirm a positive breath test for alcohol shall be entirely voluntary, at the individual's discretion. In the absence of a voluntary blood test the second positive breath test shall be considered a confirmed positive.

2.5. HHS-certified Laboratory Personnel.

(a) "Day-to-Day Management of the HHS-certified Laboratories."

(1) The HHS-certified laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratories' drug testing facilities.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the appropriate State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology, or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology, and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse; and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of their testing laboratories. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in Section 2.7(0) of this appendix).

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that test results are not reported until all corrective actions have been taken and he or she can assure that the test results provided are accurate and reliable.

(b) "Test Validation." The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) "Day-to-Day Operations and Supervision of Analysts." The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain-of-custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) "Other Personnel." Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) "Training." The laboratory's testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) "Files." Laboratory personnel files shall include: résumé of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

2.6 Licensee Testing Facility Personnel.

(a) "Day-to-Day Management of Operations." Any licensee testing facility shall have an individual to be responsible for day-to-day operations and to supervise the

testing technicians. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the licensee testing facility, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; and proper remedial actions to be taken in response to detecting aberrant test or quality control results.

(b) "Other Personnel." Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(c) "Files." Licensees' testing facility personnel files shall include: résumé of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate and appropriate data to support determinations of honesty and integrity conducted in accordance with Section 2.3 of this appendix.

2.7 Laboratory and Testing Facility Analysis Procedures.

(a) "Security and Chain-of-Custody."

(1) HHS-certified drug testing laboratories and any licensee testing facility shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records and split samples are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. All authorized visitors and maintenance and service personnel shall be escorted at all times in the HHS-certified laboratory and in the licensee's testing facility. Documentation of individuals accessing these areas, dates, and times of entry and purpose of entry must be maintained.

(2) Laboratories and testing facilities shall use chain-of-custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain-of-custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain-of-custody forms for those specimens or aliquots as they are received.

(b) "Receiving."

(1) When a shipment of specimens is received, laboratory and licensee's testing facility personnel shall inspect each package for evidence of possible tampering and compare information on specimen containers within each package to the information on the accompanying chain-of-custody forms. Any direct evidence of tampering or discrepancies in the information on specimen containers and the licensee's chain-of-custody forms attached to the shipment shall be reported within 24 hours to the licensee, in the case of HHS-certified laboratories, and shall be noted on the laboratory's chain-of-custody form which shall accompany the specimens while they are in the laboratory's possession. Indications of tampering with specimens at a testing facility operated by a licensee shall be reported within 8 hours to senior licensee management.

(2) Specimen containers will normally be retained within the laboratory's or testing facility's accession area until all analyses have been completed. Aliquots and the chain-of-custody forms shall be used by laboratory or testing facility personnel for conducting initial and confirmatory tests, as appropriate.

(c) "Short-Term Refrigerated Storage." Specimens that do not receive an initial test within 7 days of arrival at the laboratory or are not shipped within 6 hours from the licensee's testing facility and any retained split samples shall be placed in secure refrigeration units. Temperatures shall not exceed 6 °C. Emergency power equipment shall be available in case of prolonged power failure.

(d) "Specimen Processing." Urine specimens identified as presumptive positive by a licensee's testing facility shall be shipped to an HHS-certified laboratory for testing. Laboratory facilities for drug testing will normally process urine specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests at either the licensee's testing facility or an HHS-certified laboratory, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts. Special processing may be conducted to analyze specimens suspected of being adulterated or diluted (including hydration). Any evidence of adulteration or dilution, and any detected trace amounts of drugs or metabolites, shall be reported to the Medical Review Officer.

(e) "Preliminary Initial Test."

(1) For the analysis of urine specimens, any preliminary test performed by a licensee's testing facility and the initial screening test performed by a HHS-certified laboratory shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The initial test of breath for alcohol performed at the collection site shall use a breath measurement device which meets the requirements of Section 2.7(o)(3). The following initial cut-off levels shall be used when screening specimens to determine whether they are negative for the indicated substances:

Initial test cut-off level (ng/ml)	
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	300*
Phencyclidine	25
Amphetamines	1,000
Alcohol	0.04% BAC

*25 ng/ml is immunoassay specific for free morphine.

In addition, licensees may specify more stringent cutoff levels. Results shall be reported for both levels in such cases.

(2) The list of substances to be tested and the cut-off levels are subject to change by the NRC in response to industry experience and changes to the HHS Guidelines made by the Department of Health and Human Services as advances in technology, additional experience, or other considerations warrant the inclusion of additional substances and other concentration levels.

(f) "Confirmatory Test."

(1) Specimens which test negative as a result of this second screening shall be reported as negative to the licensee and will not be subject to any further testing unless special processing of the specimen is desired because adulteration or dilution is suspected.

(2) All urine samples identified as presumptive positive on the screening test performed by a HHS-certified laboratory shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cut-off values listed in this paragraph for each drug, and at the cut-off values required by the licensee's unique program, where differences exist. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

Confirmatory test cut-off level (ng/ml)	
Marijuana metabolite	15*
Cocaine metabolite	150**
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500
Alcohol	0.04% BAC

*Delta-9-tetrahydrocannabinol-9-carboxylic acid.

**Benzoylecgonine.

In addition, licensees may specify more stringent cut-off levels. Results shall be reported for both levels in such cases.

(3) The analytic procedure for confirmatory analysis of blood specimens voluntarily provided by individuals testing positive for alcohol on a breath test shall be gas chromatography analysis.

(4) The list of substances to be tested and the cut-off levels are subject to change by the NRC in response to industry experience and changes to the HHS Guidelines made by the Department of Health and Human Services as advances in technology, additional experience, or other considerations warrant the inclusion of additional substances and other concentration levels.

(5) Confirmatory tests for opiates shall include a test for 6-monoacetylmorphine (MAM) if the screening test is presumptive positive for morphine.

(g) "Reporting Results."

(1) The HHS-certified laboratory shall report test results to the licensee's Medical Review Officer within 5 working days after

receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual at the laboratory. The report shall identify the substances tested for, whether positive or negative, the cut-off(s) for each, the specimen number assigned by the licensee, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time when possible.

(2) The HHS-certified laboratory and any licensee testing facility shall report as negative all specimens, except suspect specimens being analyzed under special processing, which are negative on the initial test or negative on the confirmatory test. Specimens testing positive on the confirmatory analysis shall be reported positive for a specific substance. Presumptive positive results of preliminary testing at the licensee's testing facility will not be reported to licensee management.

(3) The Medical Review Officer may routinely obtain from the HHS-certified laboratory, and the laboratory shall provide, quantitation of test results. The Medical Review Officer may only disclose quantitation of test results for an individual to licensee management, if required in an appeals process, or to the individual under the provisions of Section 3.2. (This does not preclude the provision of program performance data under the provisions of 10 CFR 26.71(d).) Quantitation of negative tests for urine specimens shall not be disclosed, except where deemed appropriate by the Medical Review Officer for proper disposition of the results of tests of suspect specimens. Alcohol quantitation for a blood specimen shall be provided to licensee management with the Medical Review Officer's evaluation.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (e.g., teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone from HHS-certified laboratory personnel to the Medical Review Officer. The HHS-certified laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer a certified copy of the original chain-of-custody form signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports and attached to which shall be a copy of the test report.

(6) The HHS-certified laboratory and the licensee's testing facility shall provide to the licensee official responsible for coordination of the fitness-for-duty program a monthly statistical summary of urinalysis and blood testing and shall not include in the summary any personal identifying information. Initial test data from the licensee's testing facility and the HHS-certified laboratory, and confirmation data from HHS-certified laboratories shall be included for test results reported within that month. Normally this summary shall be forwarded from HHS-certified laboratories by registered or certified mail and from the licensee's testing facility not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing:

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines
Alcohol

(ii) Confirmatory Testing:

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite
Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine
Alcohol

(7) The statistics shall be presented for both the cut-off levels in these guidelines and any more stringent cut-off levels which licensees may specify. The HHS-certified laboratory and the licensee's testing facility shall make available quantitative results for all samples tested when requested by the NRC or the licensee for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the licensee in writing, all records pertaining to a given urine or blood specimen shall be retained by the HHS-certified drug testing laboratory and the licensee's testing facility for a minimum of 2 years.

(h) "Long-Term Storage." Long-term frozen storage (−20 °C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the licensee, HHS-certified laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period a licensee or the NRC may request the laboratory to retain the specimen for an additional period of time, but if no such request is received, the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period. Any split samples retained by the licensee shall be transferred into long-term storage upon determination by the Medical Review Officer that the specimen has a confirmed positive test.

(i) "Retesting Specimens." Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cut-off requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) "Split Samples." Urine specimens may be split, at the licensee's discretion, into two parts at the collection site. One half of such samples (hereafter called the aliquot) shall be analyzed by the licensee's testing facility or the HHS-certified laboratory for the licensee's purposes as described in this appendix. The other half of the sample (hereafter called the split sample) may be withheld from transfer to the laboratory, sealed, and stored in a secure manner by the licensee until the aliquot has been determined to be negative or until the positive result of a screening test has been confirmed. As soon as the aliquot has tested negative, the split sample in storage may be destroyed. If the aliquot tests positive by confirmatory testing, then, at the tested individual's request, the split sample may be forwarded on that day to another HHS-certified laboratory that did not test the aliquot. The chain-of-custody and testing procedures to which the split sample is subject, shall be the same as those used to test the initial aliquot and shall meet the standards for retesting specimens [Section 2.7(i)]. The quantitative results of any second testing process shall be made available to the Medical Review Officer and to the individual tested.

(k) "Subcontracting." HHS-certified laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the licensee. The laboratory must be capable of performing testing of the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) and of whole blood and confirmatory GC/MS methods specified in these guidelines.

(l) "Laboratory Facilities."

(1) HHS-certified laboratories shall comply with applicable provisions of any State licensure requirements.

(2) HHS-certified laboratories shall have the capability, at the same laboratory premises, of performing initial tests for each drug and drug metabolite for which service is offered, and for performing confirmatory tests for alcohol and for each drug and drug metabolite for which service is offered. Any licensee testing facilities shall have the capability, at the same premises, of performing initial screening tests for each drug and drug metabolite for which testing is conducted. Breath tests for alcohol may be performed at the collection site.

(m) "Inspections." The NRC and any licensee utilizing an HHS-certified laboratory shall reserve the right to inspect the laboratory at any time. Licensee contracts with HHS-certified laboratories for drug testing and alcohol confirmatory testing, as well as contracts for collection site services, shall permit the NRC and the licensee to conduct unannounced inspections. In addition, prior to the award of a contract, the licensee shall carry out pre-award inspections and evaluation of the procedural aspects of the laboratory's drug testing operation. The NRC shall reserve the right to inspect a licensee's testing facility at any time.

(n) "Documentation." HHS-certified laboratories and the licensee's testing facility shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by the NRC or by any licensee for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain-of-custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The HHS-certified laboratory and the licensee's testing facility shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(o) "Additional Requirements for HHS-certified Laboratories and Licensee's Testing Facilities."

(1) "Procedure manual." Each laboratory and licensee's testing facility shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual. Superseded material must be retained for three years.

(2) "Standards and controls." HHS-certified laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) "Instruments and equipment."

(i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) Alcohol breath analysis equipment shall be an evidental-grade breath alcohol analysis device of a brand and model that conforms to National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855) and to any applicable State statutes.

(iii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks, and instructions for major troubleshooting and repair. Records shall be available on preventive maintenance.

(4) "Remedial actions." There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) "Personnel available to testify at proceedings." The licensee's testing facility and HHS-certified laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on positive breath analysis or urinalysis results reported by the licensee's testing facility or the HHS-certified laboratory.

2.8 Quality Assurance and Quality Control.

(a) "General." HHS-certified laboratories and the licensee's testing facility shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain-of-custody, security, reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) "Licensee's Testing Facility Quality Control Requirements for Initial Tests." Because all positive preliminary tests for drugs are forwarded to an HHS-certified laboratory for screening and confirmatory testing when appropriate, the NRC does not require licensees to assess their testing facility's false positive rates for drugs. To ensure that the rate of false negative tests is kept to the minimum that the immunoassay technology supports, licensees shall process blind performance test specimens and submit a sampling of specimens screened as negative from every test run to the HHS-certified laboratory. In addition, the manufacturer-required performance tests of the breath analysis equipment used by the licensee shall be conducted as set forth in the manufacturer's specifications.

(c) "Laboratory Quality Control Requirements for Initial Tests at HHS-Certified Laboratories." Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cut-off).

In addition, with each batch of samples, a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cut-off. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration, shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(d) "Laboratory Quality Control Requirements for Confirmation Tests." Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cut-off).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(e) "Licensee Blind Performance Test Procedures."

(1) Licensees shall purchase chemical testing services only from laboratories certified by DHHS or a DHHS-recognized certification program in accordance with the HHS Guidelines. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) During the initial 90-day period of any new drug testing program, each licensee shall submit blind performance test specimens to each HHS-certified laboratory it contracts within the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the licensee is testing.

(4) The licensee shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result, and based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the HHS-certified laboratory. Then the licensee shall send the document to the NRC as a report of the unsatisfactory performance testing incident within 30 days. The NRC shall ensure notification of the finding to DHHS.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the licensee shall promptly notify the NRC. The licensees shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the licensee may also

require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the licensee shall instruct the laboratory to submit to them all quality control data from the batch of specimens which included the false positive specimen. In addition, the licensee shall require the laboratory to retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's substance testing program. The licensee and the NRC may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the NRC, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

2.9 Reporting and Review of Results

(a) "Medical Review Officer shall review results." An essential part of the licensees' testing programs is the final review of results. A positive test result does not automatically identify a nuclear power plant worker as having used substances in violation of the NRC's regulations or the licensee's company policies. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to licensee management officials.

(b) "Medical Review Officer—qualifications and responsibilities." The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be a licensee or contract employee. The role of the Medical Review Officer is to review and interpret positive test results obtained through the licensee's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result (this does not include confirmation of blood alcohol levels obtained through the use of a breath alcohol anaylsis device). This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not consider the results of tests that are not obtained or processed in accordance with these Guidelines, although he or she may consider the results of tests on split samples in making his or her determination, as long as those split samples have been stored and tested in accordance with the procedures described in these Guidelines.

(c) "Positive Test Results." Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result with him or her. Following verification of a positive test result, the Medical Review Officer shall, as provided in the licensee's policy, notify the applicable employee assistance program and the licensee's management official empowered to recommend or take administrative action (or the official's designated agent).

(d) "Verification for opiates; review for prescription medication." Before the Medical Review Officer verifies a confirmed positive result and the licensee takes action for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). Clinical signs of abuse include recent needle tracks or behavioral and psychological signs of acute opiate intoxication or withdrawal. This requirement does not apply if the GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine. For other drugs that are commonly prescribed or commonly included in over-the-counter preparations (e.g., benzodiazepines in the first case, barbiturates in the second) and that are listed in the licensee's panel of substances to be tested, the Medical Review Officer shall also determine whether there is clinical evidence—in addition to the urine test—of unauthorized use of any of these substances or their derivatives.

(e) "Reanalysis authorized." Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by DHHS. The Medical Review Officer shall authorize a reanalysis of the original aliquot on timely request of the individual tested, and shall also authorize an analysis of any sample stored by the licensee.

(f) "Results consistent with responsible substance use." If the Medical Review Officer determines that there is a legitimate medical explanation for the positive test result and that use of the substance identified through testing in the manner and at the dosage prescribed does not reflect a lack of reliability and is unlikely to create on-the-job impairment, the Medical Review Officer shall report the test result to the licensee as negative.

(g) "Result scientifically insufficient." Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation, the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the HHS Guidelines.) The licensee's testing facility and the HHS-certified laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual(s) responsible for day-to-day management of the licensee's test facility, of the HHS-certified laboratory or other individuals who are forensic toxicologists or who have equivalent forensic experience in urine drug testing, to provide specific consultation as required by the licensee. The licensee shall maintain records that summarize any negative findings based on scientific insufficiency and shall make them available to the NRC on request, but shall not include any personal identifying information in such reports.

Subpart C—Employee Protection

3.1 Protection of Employee Records

Licensee contracts with HHS certified laboratories and procedures for the licensee's testing facility shall require that test records be maintained in confidence, as provided in 10 CFR 26.29. Records shall be maintained and used with the highest regard for individual privacy.

3.2 Individual Access to Test and Laboratory Certification Results

Any individual who is the subject of a drug or alcohol test under this part shall, upon written request, have access to any records relating to his or her tests and any records relating to the results of any relevant laboratory certification, review, or revocation-of-certification proceedings.

Subpart D—Certification of Laboratories Engaged in Chemical Testing

4.1 Use of DHHS-certified laboratories

(a) Licensees subject to this part and their contractors shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs", Subpart C—"Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," (53 FR 11970, 11986–11989) dated April 11, 1988, and subsequent amendments thereto for screening and confirmatory testing except for initial screening tests at a licensee's testing facility conducted in accordance with 10 CFR 26.24(d). Information concerning the current certification status of laboratories is

available from: The Office of Workplace Initiatives, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) Licensees or their contractors may use only HHS-certified laboratories that agree to follow the same rigorous chemical testing, quality control, and chain-of-custody procedures when testing for more stringent cut-off levels as may be specified by licensees for the classes of drugs identified in this Part, for analysis of blood specimens for alcohol, and for any other substances included in licensees' drug panels.

Dated at Rockville, MD this 24th day of May, 1989.

For The Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

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June 7, 1989

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 271 et al.

Food Stamp Program; Final Rule and Interim Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 314]

Food Stamp Program; Categorical Eligibility for Certain Public Assistance and Supplemental Security Income (SSI) Recipients

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking puts in final form Food Stamp Program interim regulations published August 5, 1986 which implemented the categorical eligibility provision contained in section 1507 of the Food Security Act of 1985 (Pub. L. 99–198; December 23, 1985). That provision mandates that households that only contain members who are recipients of public assistance (PA) or supplemental security income (SSI) benefits be categorically eligible for food stamp benefits.

This final action also addresses a provision of the Hunger Prevention Act of 1988 (Pub. L. 100–435, September 19, 1988) which eliminates the September 30, 1989 expiration date for testing categorical eligibility under the Food Security Act of 1985.

DATES: The new provisions contained in this final action at § 272.1(g)(108), § 273.2(j)(1)(iv), § 273.2(j)(2)(iii)(B), § 273.17 and § 273.18 are effective July 7, 1989 to be implemented no later than September 1, 1989. All the remaining provisions, which specifically adopt, as final, interim provisions as published at 51 FR 28200–28202, August 5, 1986 or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Certification Policy Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, VA. 22302, telephone (703) 756–3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition or United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. *10.551*. For the reasons set forth in the Final Rule and related Notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program. Potential and current participants will be affected because of changes to various program policies and procedures.

Paperwork Reduction Act

The provision at 7 CFR 273.10(g)(1)(ii) requiring the State agency to tell households to inform the State agency of their eligibility for PA or SSI benefits on form FNS–442, Action Taken on Your Food Stamp Case, does not alter or change burden estimates for the FNS–442 as approved under OMB No. 0584–0064. The remaining provisions of this rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Comments

On August 5, 1986, the Department issued an interim rule at 51 FR 28196 which implemented the Food Security Act of 1985 provision on categorical eligibility for certain PA and SSI households. A total of 15 comment letters were received on the interim rule—the majority from State agencies. All comments received were reviewed but only those issues that either arose repeatedly or those which can be addressed by regulation are discussed in detail. Comments which proposed legislative changes or were unclear or not pertinent are not addressed in this preamble. A full explanation of the rationale of the rule is contained in the preamble of the interim rule. It is suggested that persons also refer to that rule for background informaion.

Reactivation of Denied Cases—§ 273.2(j)(1)(iv)

The interim rule established a procedure which required the State agency to reevaluate any application from a household with applied for both food stamps and Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) but which was denied food stamps prior to action being taken on the AFDC or SSI application. The reevaluation would be done when the household was found to be eligible for or authorized for receipt of AFDC or SSI benefits and thus categorically eligible. The interim rule provided that the State agency shall not reinterview the household but shall use available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application resigned and dated by the authorized household member or procedure. In general, commenters preferred an outright denial and reapplication and, at the very least, wanted more flexibilty in contacting the household to update information on the original application. One commenter was concerned that State agencies are not *required* to contact the household and, thus, the household may not be actively involved in the reevaluation process.

Because the Department considers that categorical eligibility begins at the point when the person or assistance unit becomes eligible for receipt of PA or SSI benefits, or becomes authorized for receipt of PA or SSI benefits, this final action retains the provision requiring reactivating a denied food stamp case which is later determined categorically eligible. However, to ensure that the household has an opportunity to participate in the reevaluation process and that the State agency has the latest information, this final action amends 7 CFR 273.2(j)(1) to require State agencies to first use available information to update the application and then contact the household to explain and confirm changes and determine if any other changes in circumstances have occurred. The final rule still requires

that the household initial changes and re-sign and date the application, *unless* the household does not supply new information or information supplied by the household does not deviate from the available information obtained by the State agency.

The interim rule provided that if AFDC or SSI eligibility is not determined within 30 days after the date the food stamp application is filed and the household is not eligible as a nonpublic assistance (NPA) household, the application shall be denied on the 30th day and reactivated when the AFDC/SSI eligibility determination is made. One commenter suggested that the application be pended on the 30th day in lieu of denial and reactivation. This suggestion is not adopted. The Food Stamp Act requires that a decision on food stamp eligibility by made within 30 days of the date the application is filed and the Department cannot justify keeping a case pending beyond 30 days when the household is ineligible for food stamps.

This same commenter suggested that categorical eligibility be effctive on the same date AFDC/SSI is effective. The commenter explained her concern through the use of a case example: An AFDC application was filed October 6, 1986. Because the State agency opted to make AFDC effective the first of the month in which the 30th day after the date of the AFDC application falls, AFDC became effective November 1, 1986. The interim rules provide that any household determined PA eligible which is categorically eligible within the 30-day food stamp processing time shall be provided food stamp benefits back to the date of the food stamp application. The commenter pointed out that the household in the example will be considered categorically eligible effective for a period of time for which the household was not eligible for AFDC.

It is not clear from the commenter's example if the household was determined to actually be *ineligible* for PA for the period October 6 through October 31 and, thus, not entitle to receive PA beneifts for that period *or* if the household was determined to be *eligible* for PA but the State agency opted, for various administrative reasons, not to provide PA benefits for October 6 through October 31 but rather to begin delivery of PA benefits on an ongoing basis in November, or opted to provide October benefits along with the subsequent full month's benefits for November. It was never the intent of the Department to extend categorical eligibility for food stamp benefits to a person or assistance unit which is actually determined *ineligible* for PA for a given month and, thus, not entitled to PA benefits. The Department's concern, with regard to the interim provision at 7 CFR 273.2(j)(1)(iv), was that the effective date of categorical eligibility for a given household not be delayed simply because of when the State agency opts to begin the delivery of PA benefits to an eligible PA applicant. The date used by a State agency as the date on which an eligible PA applicant will actually begin to receive PA benefits can vary.

Using the commenter's example case, if the State agency determined *in* October that the person or assistance unit is an eligible PA applicant but opted, for some administrative reason, not to begin delivery of any PA benefits until November, it is the Department's intent that the household be considered categorically eligible for food stamps and receive food stamp benefits for October back to the date of the food stamp application (assuming the household applied for food stamps in October). It is the Department's opinion that such household is "authorized" to receive PA in October and should be considered a PA recipient for categorical eligibility purposes. On the other hand, it the State agency determined *in* October that the person or assistance unit is an ineligible PA applicant for the period October 6 through October 31 but PA-eligible for a period *beginning* November 1 or a peiod between November 1 and the end of the 30-day food stamp processing time, it is the Department's intent that the household be considered categorically eligible for food stamps beginning in November and receive food stamp benefits for the entire month of November.

Therefore, this final action retains the statement at 7 CFR 273.2(j)(1)(iv) which provides that any household determined PA eligible which is categorically eligible within the food stamp 30-day processing time shall be provided food stamp benefits back to the date of the food stamp application. However, to ensure uniform treatment and avoid misapplication of the effective date of categorical eligibility, this final action adds a clarifying statement to the provision which provides that in no event shall food stamps be back paid under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any PA benefits for that month, unless the household is eligible for food stamp benefits as an NPA case.

Disqualified/Ineligible Person—§273.2(j)(2)(ii)

The interim rules provided that under no circumstances shall any household be considered categorically eligible if *any member* of the household is disqualified for an intentional Program violation, failure to comply with monthly reporting requirements, or failure to comply with work requirements (in accordance with 7 CFR 273.7). At the time the interim rules were published, 7 CFR 273.7 provided that if any member of a household failed to comply with the work requirements of 7 CFR 273.7, the entire household would be disqualified from the Program. The August 5 interim rules governing catgorical eligibility were consistent with this policy. However, a subsequent rule published at 51 FR 47378, December 31, 1986, amended 7 CFR 273.7 to provide that the entire household would be disqualified only if the head of the household failed to comply with the work requirements of 7 CFR 273.7. If another member failed to comply, only that member is disqualified. Therefore, as noted by a commenter, the categorical eligibility rules need to be revised to clarify how to handle both types of disqualification situations. Therefore, this final action amends 7 CFR 273.2(j)(2) to clarify that households disqualified because the "head of the household" failed to comply with the work requirements of 7 CFR 273.7 shall not be considered categorically eligible. Households which contain a member, other than the head of the household, who is disqualified because of a failure to comply with the requirements of 7 CFR 273.7, could be considered categorically eligible, if the household is otherwise eligible for food stamp benefits. This policy for handling categorical eligibility for households which contain a member, other than the head of the household, who fails to comply with 7 CFR 273.7 is consistent with the provision governing categorical eligibility of households which contain other types of ineligible members; i.e. an ineligible alien, an ineligible student, an SSI recipient in a cash-out State, or persons institutionalized in a nonexempt facility.

A question was asked on how to handle households disqualified for failure to comply with workfare. In accordance with rules published December 31, 1986, workfare can be a component of a State agency's Employment and Training (E&T) program. A State agency's E&T program is established in accordance with 7 CFR 273.7. Thus, failure to comply with

workfare as an E&T component is subject to the disqualification provisions of 7 CFR 273.7. Handling categorical eligibility for households or individuals disqualified under 7 CFR 273.7 is explained in more detail in the previous paragraph.

Where workfare is not a component of a State agency's E&T program, disqualification for failure to comply is subject to the disqualification provisions of 7 CFR 273.22. In accordance with 7 CFR 273.22, the entire household is disqualified if *any* member fails to comply with workfare. It is Congress' intent that households disqualified due to a violation of food stamp rules not be reinstated due to categorical eligibility. (H.R. Rpt. No. 99-447, 99th Cong., 1st Sess., Dec. 17, 1985, p. 521.) Thus, households disqualified in accordance with 7 CFR 273.22 cannot be considered categorically eligible. Accordingly, this final action amends 7 CFR 273.2(j)(2) to specifically prohibit households in accordance with 7 CFR 273.22 from being considered categorically eligible.

Another commenter asked that the statement contained in the preamble of the August 5 interim rule which clarifies Congressional intent that a household disqualified for Program violations cannot be reinstated to the Food Stamp Program because of categorical eligibility be included in the regulatory language. The Department adopted this suggestion and this final action amends 7 CFR 273.2(j)(2) accordingly.

Current rules at 7 CFR 273.11(c)(3) provide that whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining members based, as much as possible, on information in the case file. One commenter suggested that a reference to this policy be included in the rules to clarify that the provision applies for households that must be reevaluated because one of its members was disqualified for an intentional Program violation. The interim rules provide that households not entitled to categorical eligibility because of the Program's disqualification provisions are subject to all food stamp eligibility and benefit provisions and this would include all the provisions of 7 CFR 273.11(c). However, the Department agrees that a reference to the provisions of 7 CFR 273.11(c) would clarify this policy. Therefore, this final action amends 7 CFR 273.2(j)(2) to require, by regulatory reference, that State agencies apply all the provisions of 7 CFR 273.11(c) when determining the eligibility or ineligibility of remaining household members when a member of the household is disqualified or otherwise considered ineligible to participate in the Program.

Suspension for Cases Entitled to Zero Benefits—§ 273.2(j)(2)(v)(F)

Several comments were received on the interim rule's procedures to suspend a case which is categorically eligible but the household's income is such that it is not entitled to food stamp benefits ("zero benefit" cases). The interim rule required that the case not be denied but that it be held in suspension in accordance with 7 CFR 273.10(e)(2)(iii)(A) to monitor if the household becomes entitled to benefits at any time during the certification period. Commenters preferred to give State agencies an option to deny rather than suspend such cases in accordance with 7 CFR 273.10(e)(2)(iii)(A). In the latter case, the household would reapply if its circumstances change so that it becomes entitled to benefits. State agencies have indicated that suspension of these cases is an administrative burden requiring extensive system changes, especially for computerized systems. The State agencies project that only a minimal number of households would be entitled to "zero benefits" and that the majority of those households would not become entitled to benefits within the certification period. Also, State agencies believe that the large majority of these households would always be ineligible for "zero" benefits. Further, these households could reapply at any time their circumstances change to become eligible.

This final action retains the interim provision. The Department cannot adopt this suggestion because categorical eligibility is determined based on a household's status as a PA/SSI recipient. The provision at 7 CFR 273.10(e)(2)(iii)(A) applies to households determined eligible based on the Program's gross and/or net income tests and whose net income exceeds the level at which benefits are issued. Categorically eligible households, by statute, cannot be subject to an income test for food stamp eligibility. To deny such households based on the fact that their net income exceeds the level at which benefits are applied would indirectly result in denial of eligibility based on a type of income test.

Restored Benefits—§ 273.2(j)(1)(iv)

The interim rule provided that denied households which later become categorically eligible are entitled to restored benefits from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later. The interim rule also provided that benefits be restored in accordance with 7 CFR 273.17.

Two commenters asked that the rule clarify whether or not the 12-month limit for restoring benefits under 7 CFR 273.17 applies to denied households which later become categorically eligible. Because the statute mandated that the categorical eligibility provision of the law was effective on December 23, 1985, rstored benefits would be required to be paid back to that date for some households and the period of restoration could be longer than 12 months. Thus, the 12-month limit under the provisions of 7 CFR 273.17 cannot be applied and this final action amends 7 CFR 273.17 to clarify this matter for categorical eligibility purposes and other such legislative action which results in a restoration period of more than 12 months.

Income Deduction—§ 273.10(d)(7)

The interim rule provided that individuals entitled to the excess medical deduction at 7 CFR 273.9(d)(3) and the uncapped excess shelter expenses deduction at 7 CFR 273.9(d)(5), shall receive these two income deductions, if they incur such expenses, for the period for which SSI benefits are authorized to be paid, or from the date of the food stamp application, whichever is later as discussed in § 273.2(j) of the interim rule. The interim rule also provided that individuals entitled to restored benefits, in accordance with § 273.2(j)(1)(iv) of the interim rule, shall receive restored benefits using the medical and shelter expense deductions, if they incur such expenses. One commenter questioned whether households containing newly entitled SSI recipients but which do not meet the categorical eligibility criteria would be entitled to the medical and excess shelter expense deductions for the period for which the SSI recipient is authorized to receive SSI benefits.

All of the provisions of the interim rule are intended to change normal procedures for determining food stamp eligibility and benefit levels for categorically eligible households. Households which are not considered categorically eligible are subject to the normal food stamp eligibility and benefit level determination procedures, including the procedures for handling the medical and excess shelter expense deductions under 7 CFR 273.9 (d)(3) and (d)(5). The Department believes that the commenter was misled and confused because the regulatory language of § 273.10(d)(7) of the interim rule used the

term "individuals" instead of "households" and the rule addressed the relationship of the provisions for categorically eligible households through regulatory reference to § 273.2(j) of the interim rule.

The preamble of the interim rule discussed the Department's intent that the procedures for handling the medical and excess shelter expense deductions for households denied as NPA households which later become categorically eligible, be consistent with the timeframes and procedures for paying benefits to households determined categorically eligible within the 30-day food stamp processing standard. The preamble also noted that the Department needed to address how to handle the medical and shelter expense deductions for households determined eligible as NPA households which later become categorically eligible.

In light of the commenter's confusion and possible misapplication of the provision, this final action amends 7 CFR 273.10(d)(7) to be more specific and clarify Departmental intent. This final action provides that a household which contains an SSI recipient that is determined, within the 30-day processing standard, to be categorically eligible, or eligible as an NPA household and later becomes categorically eligible, shall receive the medical and shelter deductions as discussed in 7 CFR 273.9 (d)(3) and (d)(5), if it incurs such expenses, for the period for which SSI benefits are authorized to be received, or from the date of the food stamp application, whichever is later. A household, containing an SSI recipient, which is determined ineligible as an NPA household and later becomes categorically eligible, shall receive the medical and excess shelter expense deductions, if they incur such expenses, for the period for which restored benefits are to be paid in accordance with 7 CFR 273.2(j)(1)(iv); i.e., from the beginning of the period for which SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later.

Claims—§ 273.18

Some commenters wanted the Department to clarify how claims would be handled in the event a categorically eligible household was subsequently found to be ineligible for PA or SSI at the time they had received it. The preamble to the interim rule had stated that the food stamp claims recovery rules applied to categorically eligible households. However, it was not clear in the interim rule how claims would be treated for categorically eligible households. For example, a household receiving PA might be subsequently determined ineligible for PA. The questions are whether a food stamp claim should be filed against such a household for the time when it was improperly receiving PA and if so, how would the amount of the claim be determined. The interim rule did not offer guidance, although it stated that there would not be a quality control variance if all members of the household actually received PA or SSI.

The Department carefully considered the issue of how claims should be treated in cases of categorical eligibility and is offering the following clarification. For claims purposes, categorical eligibility cannot be rescinded retroactively. As long as everyone in the household received PA or SSI during a given time, it would be considered to have been properly eligible for food stamps for claims purposes even if its PA or SSI eligibility was subsequently determined improper. This is consistent with the statute where the intent is that certain households would be determined eligible for food stamps not on the basis of factors such as income and assets but on the basis of receipt of PA or SSI. The Act does not specify that this eligibility would be considered provisional until such time as the PA or SSI eligibility was thoroughly validated. Therefore, the determination that the household was eligible for food stamps would be considered "accurate" so long as each member of the household had received PA or SSI. (Of course, once the State agency is aware that the household should not be receiving food stamps because it is no longer receiving PA or SSI, the State agency must take action to ensure that the household does not continue to receive food stamps.)

Although categorical eligibility cannot be rescinded retroactively, a claim to correct an improper benefit level can be established against a categorically eligible household whose PA or SSI eligibility is subsequently determined improper if the reason for the subsequent PA or SSI ineligibility was additional household income or changes in household size and/or deductions which directly affect the calculation of the food stamp benefit amount. A claim could not be established if the reason the household was subsequently declared ineligible for PA or SSI related to excess household resources.

Food stamp benefits are based on the difference between the maximum allotment for the household's size and 30 percent of the household's net income. This is true for categorically eligible households and for noncategorically eligible households alike. Thus, claims could be collected from a categorically eligible household if the household's net income had changed. For example, if a four-person household was originally recorded as having $1,100 earnings, they might be entitled to $250 PA. Thus, their gross income was $1,350, which was above the gross income limits, and they would not have received food stamps if it were not for categorical eligibility. After adding together their earned and PA income and after taking into account their deductions, the household would have had $696 net income and would have been entitled to an allotment of $91. If it was determined that the household had $200 earnings that had been previously overlooked, the $200 would be added to all of their other income, and their gross income would be $1,550 for food stamp purposes. Based upon the income and deductions actually available to the household, the household should have received an allotment of $43. Subtracting this amount from the actual issuance of $91 the household would owe a claim of $48. Thus, a claim could be calculated for a categorically eligible household if the reason for a household's subsequent ineligibility for PA or SSI related to the discovery of additional income. A claim could not be calculated (and therefore established) if the reason the household was subsequently declared ineligible for PA related to excess household resources.

In some cases, the additional gross income would result in a net income amount so high that the household would be entitled to a zero allotment. Thus, the amount of the claim would be equal to the entire amount issued to the household. The household still would have been categorically eligible for food stamps but it would have been entitled to zero benefits. It should be noted that in the case of a household of one or two persons, the minimum benefit rules would apply when calculating the allotment the household was actually entitled to receive.

A claim could also be established if the reason for a household's subsequent PA or SSI ineligibility related to the discovery of an unreported household member that did not receive PA or SSI. Although the household still would have been considered categorically eligible for food stamps based on the fact that the reported members did receive PA or SSI, a claim can be established for the difference between the allotment the household received and the allotment the household should have received as an NPA household had the additional

member been properly reported and included in the calculation of a benefit amount based on household size and net income.

The Department is not restructuring its claims regulations or revising the FNS–209 in order to make a new category for households whose food stamp categorical eligibility was based on PA or SSI eligibility that was subsequently determined improper. Although no existing claims category precisely fits this circumstance, the Department has decided that the existing categories can be used. Once the State agency has determined that the household should not have received PA or SSI, it must determine the cause. This is important particularly to determine whether or not a claim can be calculated and whether the State agency is entitled to retain any portion of the value of the claim and how much. The three categories for claims are inadvertent household error, administrative error, and intentional Program violation. In accordance with 7 CFR 273.18(h), State agencies are entitled to retain 25 percent of the value of inadvertent household error claims they collect. They are entitled to retain 50 percent of intentional Program violation claims. They are not entitled to retain any portion of administrative error claims because they should not benefit from their own errors.

This final action amends 7 CFR 273.18 to provide that the category for inadvertent household errors will be used when the overissuance was caused by a misunderstanding or unintended error on the part of the household, as provided in 7 CFR 273.18(a)(1). In addition, since the SSI agency is not an agency of State government, instances of SSI agency error will also be considered inadvertent household errors, unless fraud has been determined. Thus, the State agencies would retain a portion of claims collected when the SSI agency would retain a portion of claims collected when the SSI agency has been in error. The category for administrative errors will be used if the overissuance was caused by State agency action or failure to take action. In some cases, the food stamp State agency may not be at fault, but another agency of State government may be. In those cases, in order to prevent the State from benefiting from their own errors, the State agency will be assessed as the responsible agency so long as the State or local welfare agency made the decision. In cases of recipient fraud, the category for intentional Program violation can be used. However, it is important to note that this claims category can only be used where the food stamp State agency has pursued the case in accordance with 7 CFR 273.16. In other words, a fraudulent act to obtain PA or SSI benefits cannot automatically be considered a fraudulent act to obtain food stamp benefits. A separate and distinct food stamp action must be pursued by the State agency, in accordance with 7 CFR 273.16, before the State agency can use the claims category of intentional Program violation described in 7 CFR 273.18. Until such food stamp action is taken, the category for inadvertent household errors shall be used on the FNS–209.

Quality Control

Waiver of liability. The interim rule contained a special quality control (QC) provision about the implementation of the interim rule. According to that provision (§ 272.1(g)(78)(ii)), QC would not find a case in error solely because of the way a State agency implemented, or did not implement, the interim rule. This special procedure was to be in effect between August 5, 1986 and October 1, 1986. Some commenters asked that the special provision go beyond October 1. One commenter suggested 90 days, one six months. While the Department does not agree that a six-month period is necessary, or even desirable, it is appropriate to allow at least a 60-day period from the first day of the first full month after the August 5 publication date of the interim rule. Another commenter asked how QC should handle variances in cases with review dates before August 5, 1986. These cases are a problem because the interim rule was effective retroactively to December 23, 1985. QC would have found some active (or participating) households ineligible and some negative actions (denials and terminations) valid. Retroactively, the ineligible households became eligible while the valid negative actions became invalid. Accordingly, this final action amends 7 CFR 272.1(g)(78)(ii) to provide that QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of the interim rule in cases with review dates between December 23, 1985 and October 31, 1986. For reviews already completed by State agency QC, the Federal QC system will review and change Federal subsample findings if State agency QC identifies the cases. The State agency QC findings will not be changed. The Department would like to emphasize that this provision applies only to the coding of variances for QC purposes. This provision does not relieve Federal and State QC of their responsibilities to report information about households to the appropriate authorities. State agencies shall handle all resulting claims and restorations as provided elsewhere in this final action.

Erroneous Information. One commenter suggested that a QC variance should not be charged when the Food Stamp Program receives erroneous information from the State agency's AFDC Program. The commenter pointed out that there is a QC procedure for when a Federal agency provides erroneous information to the Food Stamp Program that a variance will not be charged. (See FNS Handbook 310, section 181.2).

The Department does not agree that QC should treat the provision of erroneous information by a State and Federal agency in the same manner. By law, the Department must not penalize a State agency through QC if the Federal government provided wrong information through automation. The State agency acted as it should have in relying upon the federally provided information. When AFDC payment information was incorrect the State agency itself erred. The State agency did not properly coordinate its AFDC and food stamp components in the transfer of information. Therefore, when the State agency overissues or underissues coupons, QC should charge the State agency with a variance.

Verification. One commenter recommended that QC should not verify income that the AFDC Program had already verified. Another commenter stated that QC should not review benefit levels (presumably AFDC and SSI benefits) because the verification of these levels is superseded by categorical eligibility.

The Department does not agree with these comments for two reasons. First, as explained earlier in this preamble, the amount of the AFDC benefit, SSI benefit, or other verified income is not necessarily deemed for food stamps. Rather, the Food Stamp Program deems (or considers) that the household has met the income eligibility limits. Since the Program still needs the exact income amounts to calculate an allotment, QC must still review those amounts.

Second, QC is usually reviewing a sample month which is not the month of the food stamp application. Between application and the sample month a household's AFDC grant, SSI benefit, or other income may change. The household must report changes in SSI and other non-AFDC income. The State agency must process changes in all three income sources. Therefore, QC must review the income amounts to ensure

that the sample month's allotment reflected all the changes that should have been processed.

Handling changes. One commenter asked how QC would review changes in a household's circumstances. For example, if a household became ineligible for SSI but failed to report the change, would there be an error for food stamps? For eligibility, no. QC does not review the five special factors for eligibility, because eligibility is assumed under the law. If the household members were all authorized (by SSA) to receive SSI, QC accepts that. QC does not verify whether the household members were eligible for SSI. In reviewing benefits, however, the answer may be different. If a household's SSI income changed, QC would review that change. A finding of error may result. As another example of a change, SSA may close a household member's SSI case. If the household did not report this change, would its categorical eligibility be affected? Yes. All households must report all changes in sources of income, like getting new sources and losing old ones. Loss of SSI is a change that must be reported. QC would charge the State agency with a variance if the household was ineligible under normal Program rules.

Review timeframes. In the preamble to the interim rule, the Department described the procedures for reviewing a household's categorical eligibility. As a first step, QC would verify the household's correct composition "as of the review date." The correct procedure is to verify the household's correct composition according to the eligibility system used—prospective or retrospective. Under prospective eligibility, QC verifies composition on the review date. Under retrospective eligibility, QC verifies composition on the last day of the budget month.

Other concerns

Several commenters raised concerns about requiring verification of income not verified by AFDC and whether individual income sources are assumed or just the gross and net tests. Households are only considered to have met the resource test and the gross and net income tests by virtue of FSP eligibility based on their status as PA/SSI recipients. Because the food stamp criteria are used in the benefit calculation, any income, deduction or factor not verified by AFDC or SSI must be verified if required under 7 CFR 273.2(f) for the purpose of a food stamp benefit calculation.

In preparing this action, it came to the Department's attention that the provision of the interim rule of August 5 which amended 7 CFR 273.2(k) could be misleading. Specifically the phrase "authorized to receive PA or SSI benefits as defined in § 273.2(j)" should read "authorized to receive PA or SSI benefits as discussed in § 273.2(j)". The intent of the reference is to alert users to the fact that categorical eligibility is extended to persons "authorized" to receive AFDC/SSI benefits as well as those in actual receipt of such benefits. As currently written, the regulatory reference appears to direct users to a definition of PA or SSI benefits. To ensure proper use of the provision, this final action amends the regulatory reference phrase in 7 CFR 2723.2(k) to clarify Departmental intent.

Implementation

A number of commenters expressed concern with the immediate implementation date and the retroactive effective date of the August 5 interim rule. While the Department understands these concerns, it had no discretion in this area. The Department had to make the provisions effective retroactively to December 23, 1985 because the statute specifically provided that the categorical eligibility provisions of the legislation were effective on that date.

This final action provides that the provisions of this action which adopt, as final without change, a provision of the interim rule or modify a provision of the interim rule for clarity only are retroactively effective to December 23, 1985. The clarifications do not represent any change in intended policy and, thus, do not require any special implementation efforts by State agencies. The QC provision in § 272.1(g)(78)(ii) is also effective retroactively to December 23, 1985 as it is directly related to implementation of the interim rule and has no impact on the implementation of this final rule.

This action further provides that the provisions of this final action which, as the result of changes resulting from the Department's response to comments on the interim rule, require the alteration of State procedures, are to be effective September 1, 1989. State agencies are afforded 60 days in which to complete implementation efforts of the new provisions. QC errors resulting from application of any new provision of this final action shall be handled in accordance with the interim rules published November 2, 1988 (53 FR 44171).

Recision of Expiration Date

In accordance with section 1507 of the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) and the preamble of the August 5, 1986 interim regulations, categorical eligibility was to be tested only through September 30, 1989. Thus, the provisions of the interim regulation and subsequent final action on those provisions contained in this action would have ceased to be effective on that date. Subsequent legislative action has changed this stipulation. In accordance with section 201 of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988), the Department hereby announces that the provisions of the August 5, 1986 interim regulations which are adopted as final or modified by the provisions contained in this final action, are no longer subject to an expiration date and shall be retained as permanent regulatory policy.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Part 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. The amendment to add a new paragraph (g)(78) to 7 CFR 272.1, as published at 51 FR 28200, August 5, 1986, is adopted as final. However, paragraph (g)(78)(ii) is revised for clarity.

3. In § 272.1, a new paragraph (g)(108) is added in numerical order, the revision and addition read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(78) * * *

(ii) For quality control (QC) purposes only, QC reviewers shall not identify variances resulting solely from either implementation or nonimplementation of this rule in cases with review dates between December 23, 1985 and October 31, 1986, inclusive.

* * * * *

(108) *Amendment No. 314.* (i) The provision of *Amendment No. 314* which adds five sentences to § 273.2(j)(1)(iv) and the provisions which add a new paragraph § 273.2(j)(2)(iii)(B) and amend §§ 273.17 and 273.18 are effective July 7,

1989 and shall be implemented no later than September 1, 1989.

(ii) All remaining provisions of *Amendment No. 314*, which adopt the interim provisions of August 5, 1986 as final without change or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985 (the effective date of the interim rulemaking). These provision do not reflect a change in intended policy and, therefore, do not require special implementation efforts by State agencies.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS

4. The amendment to § 273.2, as published at 51 FR 28200, August 5, 1986, to revise introductory paragraph (j) is adopted final without change.

5. The amendment to § 273.2, as published at 51 FR 28200, August 5, 1986, to revise the title of paragraph (j)(l), is adopted final without change.

6. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986, to revise the first two sentences of paragraph (j)(1)(iv) and add a new sentence after the second sentence is adopted final without change.

7. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986 to revise the seventh sentence of paragraph (j)(1)(iv) and add twelve new sentences after the seventh sentence, is adopted final with the following changes: The sentence which begins with the words "The State agency shall not reinterview the household" and the sentence which begins with the words "Any changes shall be initialed" are removed and three new sentences are added in their place; the sentence which begins with the words "Any household determined PA eligible" is removed and a new sentence is added in its place; and the sentence which begins with the words "Benefits shall be paid from" was revised by a subsequent regulation published on January 30, 1989 at 54 FR 4249.

8. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, to redesignate paragraphs (j)(2) and (j)(3) as paragraphs (j)(3) and (j)(4), respectively, and to add a new paragraph (j)(2) are adopted final with the following changes:

§ 273.2 [Amended]

a. New paragraph (j)(2) is amended for clarity as follows:

1. Replacing the parenthetical phrase appearing in the first sentence of paragraph (j)(2)(i) with the phrase "(except those listed in paragraph (j)(2)(iii) of this section)";

2. Changing the reference to "paragraph (ii) of this subsubsection" appearing in paragraph (j)(2)(i)(D) to read "paragraph (j)(2)(iii) of this section";

3. Redesignating existing paragraphs (j)(2)(iii), (j)(2)(iv) and (j)(2)(v) as new paragraphs (j)(2)(v), (j)(2)(vi) and (j)(2)(vii), respectively;

4. Redesignating paragraphs (j)(2)(ii) introductory text, (j)(2)(ii)(A), (j)(2)(ii)(B), (j)(2)(ii)(C), and new paragraphs (j)(2)(iii) introductory text, (j)(2)(iii)(A), (j)(2)(iii)(B), (j)(2)(iii)(C), respectively;

5. designating the last three sentences appearing at the end of paragraph (j)(2)(i)(D) as paragraph (j)(2)(ii);

6. Designating the last sentence appearing at the end of newly designated paragraph (j)(2)(iii)(C) as paragraph (j)(2)(iv);

7. Removing the words "any member of that household is disqualified for" from the introductory text of newly designated paragraph (j)(2)(iii);

8. Adding to newly designated paragraph (j)(2)(iii)(A) the words "any member of that household is disqualified for" immediately after the designation "(A)" and removing the semicolon after the reference to § 273.16 and replacing it with the words "or for";

9. Removing from newly designated paragraph (j)(2)(iii)(B) the regulatory designation "(B)" and replacing the word "Failure" with the word "failure";

10. Removing the word "Failure" in newly designated paragraph (j)(2)(iii)(C) and adding in its place the words "the head of the household is disqualified for failure"; and

11. Adding before the period at the end of newly designated paragraph (j)(2)(iv) the words "(including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions".

b. New paragraph (j)(2)(iii)(B) is added.

Pursuant to amendment numbers 7 and 8a through 8b stated above, § 273.2 (j)(1)(iv) and (j)(2) are revised to read as follows:

§ 273.2 Application processing.

* * * * *

(j) *PA, GA, and categorically eligible households.* * * *

(1) * * *

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in § 273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a

denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or it authorized representative to initial *all* changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved. Households who file joint applications for food stamps and PA and whose PA application are subsequently denied may be required to file new food stamp applications or may have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits. State agencies shall notify households of the need for a new application. If a required new application is filed within 30 days of the original application, the filing date of the new application shall be the original filing date of the joint application.

(2) *Categorically Eligible Households.* (i) Any household (except those listed in paragraph (j)(2)(iii) of this section) in which all members receive or are authorized to receive PA and/or SSI benefits shall be considered eligible for food stamps because of their status as PA and/or SSI receipients unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in § 273.2(f) because of PA/SSI status are the resource, gross and net income limits; social security number information; sponsored alien information; and residency. If any of the following factors are questionable, the State agency shall verify, in accordance with § 273.2(f), that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph § 273.2(j);

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(iii) of this section.

(ii) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

(iii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.16 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with § 273.22; or

(C) The head of the household is disqualified for failure to comply with the work requirements in accordance with § 273.7.

(iv) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of § 273.11(c)) and cannot be reinstated in the Program of the basis of categorical eligibility provisions.

(v) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.2.

(vi) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(vii) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273.10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(F) Section 273.10(e)(2)(iii)(A).

9. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, which amended the introductory text of newly designated paragraph (j)(3)(i), amended newly designated paragraph (j)(3)(ii), and amended the first sentence of newly designated paragraph (j)(4) are adopted final without change.

10. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986, to remove the third sentence of introductory paragraph (k) and add

three new sentences in its place is adopted final with the following clarity change: The sentence added by this earlier amendment which begins with the words "However, households in which all members are either PA or SSI" is amended by replacing the words "as defined in § 273.2(j)" with the words "(as discussed in § 273.2(j))".

11. The amendment to § 273.8, as published at 51 FR 28202, August 5, 1986, to remove the last sentence in paragraph (a) and add a new sentence in its place is adopted final without change.

12. The amendment to § 273.9(a), as published at 51 FR 28202, August 5, 1986, to add a new sentence after the third sentence in introductory paragraph (a) is adopted final without change.

13. The amendment to § 273.10, as published at 51 FR 28202, August 5, 1986, to add a new paragraph (d)(7) is adopted. However, new paragraph (d)(7) is revised for clarity.

14. The amendment to § 273.10, as published at 51 FR 28202, August 5, 1986, to add a new sentence to the end of paragraph (g)(1)(ii) is adopted final without change.

The revised § 273.10(d)(7) reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions* * * *

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

* * * * *

15. In § 273.17, the last sentence of the introductory text of paragraph (a)(1) is amended by replacing the first word of the sentence "Benefits" with the words "Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits".

16. In § 273.18:

a. paragraphs (a)(1) and (a)(2) are revised;

b. new paragraphs (b)(1)(iv), (b)(1)(v) and (b)(2)(vi) are added;

c. two sentences are added at the end of paragraph (c)(1)(ii).

The additions and revision read as follows:

§ 273.18 Claims against households.

(a) * * *

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by:

(i) A misunderstanding or unintended error on the part of the household;

(ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or household size.

* * * * *

(b) * * *

(1) * * *

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2) * * *

(vi) An agency of the State or local government took an action or failed to take an appropriate action, which resulted in the household improperly receiving PA.

* * * * *

(c) * * *

(1) * * *

(ii) * * * For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

* * * * *

Date: May 30, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-13292 Filed 6-6-89; 8:45 am]

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DEPARTMENT OF AGRICULTURE

7 CFR Parts 271, 272, 273, 274, and 277

[Amdt Number 316]

Food Stamp Program: Administrative Improvement and Simplification Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends Food Stamp Program regulations to implement several Food Stamp Program provisions contained in The Hunger Prevention Act of 1988. The provisions of that Act which are addressed in this rule are: (1) Verification; (2) telephone access to certification offices in order to receive program information or to report changes; (3) simplified applications; (4) joint applications; (5) expanding the definition of disabled; (6) annualizing self-employment income and expenses from farming; (7) resource exclusions for farm households in transition from farming; (8) simplified procedures for claiming the excess medical deduction; (9) program information for low-income households; (10) optional training for volunteer and non-profit organizations; (11) federally authorized demonstration projects which cash out benefits in other assistance programs; and (12) delivery of benefits to households which apply after the fifteenth of the month.

DATE: The provisions contained in § 274.2(b) of this rule are effective retroactively to January 1, 1989 to be implemented by State agencies no later than January 1, 1990. The remaining provisions are effective July 1, 1989 and

must be implemented by State welfare agencies on that date.

Comments must be received on or before August 7, 1989.

ADDRESS: Comments should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification and Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 am to 5:00 pm Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 705.

FOR FURTHER INFORMATION CONTACT: Questions regarding this interim rule should be directed to Ms. Seymour at the above address or by telephone at (703) 756–3496.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12291/Secretary's Memorandum 1521–1

This interim rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The rule will affect the economy by less than $100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified the rule as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This interim rule will affect Program participants and the State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

The reporting and recordkeeping burden associated with the certification and continued eligibility of food stamp households is approved by the Office of Management and Budget (OMB) under OMB control number 0584–0064.

The food stamp application, as approved under this OMB number, already contains several important verification statements to the household. The requirement in § 273.2(c)(5) that State agencies develop a separate written general "Notice of Verification" versus including such information on the food stamp application or verbally conveying such information to households does not alter or change the methodologies used to determine the burden estimates approved under OMB No. 0584–0064.

The requirements in § 272.2(a), § 272.2(d) and § 272.5 relative to the submission and updating of an optional "Program informational activities planning document" as part of a State agency's Plan of Operation have been submitted to OMB and have been approved under OMB approval number 0584–0083. This rule amends the table at 7 CFR 271.8 "Information collection/recordkeeping—OMB assigned control numbers" to reflect the OMB control number for the approval of burden associated with § 272.5 of this rule.

The remaining provisions of this rule do not contain any reporting and/or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This interim rule is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to publication. Section 701(b)(5)(A)(i) of Pub. L. 100–435 mandates that except for the amendments in § 274.2, the provisions contained in this rule are effective on July 1, 1989. The amendments to the Food Stamp Act reflected in § 274.2 of this rule are effective January 1, 1989, to be implemented by the State agencies not later than January 1, 1990. Since prior notice and public comment procedures cannot be completed before the statutory effective date and because delays in implementation could adversely affect food stamp households and State agencies, G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on this interim rule prior to implementation is impracticable. The amendments reflected in the provisions of § 274.2 of this interim rule are non-discretionary. However, because the Department believes that the administration of those provisions may be improved by public comments, the Department is soliciting comments on the entire rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

The Hunger Prevention Act (HPA) of 1988 (Pub. L. 100–435, 102 Stat. 1645, Sept. 19, 1988) made a number of changes to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et. seq.). This interim rulemaking pertains to those provisions of Pub. L. 100–435 which simplify certain application procedures in the program and improve the administration of the Food Stamp Program. These provisions are discussed below.

Definition of Elderly or Disabled—7 CFR 271.2

The current definition of elderly or disabled persons contained in section 3(r) of the Food Stamp Act and reflected in 7 CFR 271.2 of the food stamp regulations includes recipients of certain old-age or disability benefits.

Persons identified as elderly or disabled are provided with certain special treatment in the determination of their food stamp eligibility and coupon allotment. Under 7 CFR 273.9, elderly or disabled persons: (1) Have the right to claim an allowable medical expense as a deduction from income; (2) may claim excess shelter costs as a deduction from income without regard to the shelter deduction limit imposed on other households; and (3) are exempted from the food stamp income eligibility test.

Section 350 of Pub. L. 100–435 adds three categories to the definition of elderly or disabled persons. These categories are: (1) Recipients of interim assistance benefits pending the receipt of supplemental security income; (2) recipients of disability-related medical assistance benefits under title XIX of the Social Security Act (SSA); and (3) recipients of disability-based State general assistance benefits. Recipients of any of these benefits must be treated as disabled persons for food stamp purposes provided the eligibility to receive the benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the SSA. Accordingly, this rule amends 7 CFR 271.2 to bring the definition of disabled into conformance with the provisions of Pub. L. 100–435.

In addition, current rules at 7 CFR 273.2(f)(1)(viii)(A) require that the State agency verify disability as defined in 7 CFR 271.2 and discusses what documentation would be acceptable verification. Consequently, this rule makes a conforming amendment to 7 CFR 273.2(f)(1)(viii)(A) to add a new paragraph (A)(*6*) to specify the documentation the recipients of any of the benefits discussed above must provide to verify the receipt of these benefits.

Training—7 CFR 272(d)

Section 322(a) of Pub. L. 100–435 amended section 11(e)(6) of the Food Stamp Act by adding a phrase to specify that comprehensive training should be provided to state personnel "* * * so that eligible households are promptly and accurately certified to receive allotments for which they are eligible * * *." Current regulations at 7 CFR 272.4(d)(1)(i) already require State agencies to provide sufficient training. This statutory amendment expresses a Congressional concern that food stamps are delivered promptly and accurately to eligible households. To relay this concern, this rule amends 7 CFR 272.4(d)(1)(i) to specifically require that training provided by the State agency must convey the goals of and methods for promptly and accurately certifying eligible households.

In addition, section 322(b) of Pub. L. 100–435 added a new provision to section 11(e)(6) of the Food Stamp Act. This new statutory provision allows State agencies, at their option, to provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that give information or perform eligibility screening to persons potentially eligible for food stamps.

Current rules do not prohibit State agencies from opening their training sessions to the public, at their discretion. However, in order to relay Congressional intent and specifically address training and assistance directed to persons working with volunteer or nonprofit organizations, this rule amends 7 CFR 272.4(d) to redesignate current paragraph (d)(2) as (d)(3) and add a new paragraph (d)(2) to allow State agencies, at their option, to offer training and assistance to persons working with certain volunteer or nonprofit organizations. This rule change also takes into consideration State agency staff and budget constraints, since the provision of this assistance and training is optional.

In addition, this rule adds a new paragraph (f) to 7 CFR 277.4 to provide that the expenses (e.g., travel costs, lodging, or meals) of the persons working with the volunteer or nonprofit organizations who receive this training and assistance would not be reimbursed. For those State agencies choosing to provide or contract for this training and assistance, allowable costs would be matched at the fifty percent level by the Federal Government in accordance with 7 CFR 277.4. Procurement standards at 7 CFR 277.14 would apply if the State agency intends to contract to provide the training and assistance.

Information for Low-Income Households—7 CFR 272.5(c)

Section 204(a) of Pub. L. 100–435 amended section 11(e)(1)(A) of the Food Stamp Act to allow State agencies, at their option, to inform low-income households about the availability, eligibility requirements, application procedures and benefits of the Food Stamp Program and receive Federal funding for such outreach activities. Prior to Pub. L. 100–435, the Food Stamp Act generally prohibited Federal funding for outreach activities, but allowed State agencies the option of conducting informational activities directed only at homeless individuals; the costs of which were eligible for 50 percent Federal reimbursement. The statutory amendment made by Pub. L. 100–435 replaces the general prohibition and exception with a provision that State agencies, at their option, may conduct outreach activities aimed at low-income households. Section 204(b) of Pub. L. 100–435 also amended section 16(a)(4) of the Food Stamp Act to specify that costs of such program informational activities are eligible for Federal reimbursement at the 50 percent reimbursement rate.

Current rules at 7 CFR 272.5(c) provide that State agencies, at their option, may carry out program informational activities directed toward the homeless, that only such efforts specifically directed towards homeless individuals as defined in 7 CFR 271.2 will be funded according to procedures established at 7 CFR 277 and that State agencies must inform FNS in writing what they will do to direct the informational activities only towards individuals who are actually homeless. Current procedures at 7 CFR 277, Appendix A, paragraph C.(14) specify that costs incurred as a result of State agencies' outreach programs are not allowable costs, with the exception of program informational activities directed toward the homeless.

In accordance with Pub. L. 100–435, this rule revises 7 CFR 272.5(c) to specify that State agencies, at their option, may request reimbursement under 7 CFR 277 for Program informational activities designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the Food Stamp Program.

In addition, current rules at 7 CFR 272.5(b)(3) require that all Program informational materials be available in languages other than English as specified in the bilingual requirements at 7 CFR 272.4(b). Consequently, this rule makes a conforming amendment to 7 CFR 272.5(c) to specify that if a State agency elects to request reimbursement for Program informational materials directed at low-income households, those materials must meet the bilingual requirements.

Before allowing costs for the subject program informational activities to be eligible for reimbursement, the Department wants to know which State agencies plan to claim such costs for reimbursement. Consequently, this rule further amends 7 CFR 272.5(c) to require that prior to claiming such costs, State agencies must receive FNS approval of an attachment to their Plans of Operation. A conforming amendment is made to 7 CFR 272.2(a)(2) to add a reference to the optional "Program informational activities plan" as a component of the States' Plan of Operation. A conforming amendment is also made to 7 CFR 272.2(d)(1) to add the requirement that State agencies submit the optional "Program informational activity" planning document to FNS for inclusion in the States' Plan of Operation. Lastly, a conforming amendment is also made to 7 CFR 277, Appendix A, to remove paragraph C.(14) which is made obsolete by this rule.

Under rules published November 6, 1979 (44 FR 64386), State agencies were required to conduct extensive Food Stamp Program outreach activities, including the annual submission for FNS approval of a detailed plan for such activities. The revisions to 7 CFR 272.5(c) contained in this rule would not require that information be provided in the Plan of Operation beyond a description of the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. At this time, the Department is not requiring that State agencies report this Program activity on the Program Activity Statement (Form FNS–366B). However, in accordance with current rules at 7 CFR 272.2 (c), (e) and (f), State agencies must update their Plans of Operation to reflect significant changes in their Program informational

activities plan. Also, current rules at 7 CFR 272.2(a) would require the State agency to report projected amounts budgeted for this program activity on the Budget Projection Statement (Form FNS–366A). The Department is not revising Form FNS–366A to provide a separate reporting line for this budget activity. State agencies should report budget estimates for this activity in the section of Form FNS–366A identified as "Other."

Waiver of the In-Office Interview—7 CFR 273.2(e)

In order to be certified for food stamp benefits, applicant households must complete an application and an interview and provide required documentation to verify statements on the application. Current rules at 7 CFR 273.2(c) require that an application must be submitted to the certification office either in person, by mail, or through an authorized representative (i.e., an adult person other than a household member who has been designated by the head of the household, or the head of the household's spouse, to represent the household during the certification process). Because benefits are calculated for eligible households as of the date the application is filed, State agencies are required to encourage households to file the application the same day the household contacts the food stamp office. If the household requests that an application be mailed, the State agency must send an application on the same day the household makes the request.

Current rules at 7 CFR 273.2(e) require all applicant households to have a face-to-face interview in a food stamp office or other certification site with an eligibility worker prior to all certification and recertification actions. However, the in-office interview must be waived, if requested by any household which is unable to appoint an authorized representative and is unable to send a household member to the food stamp office because they: (1) Are elderly or disabled as defined in 7 CFR 271.2; live in a location which is not served by a certification offfice; (3) are experiencing transportation difficulties as determined by the State agency on a case-by-case basis; or (4) are experiencing other hardships that the State agency determines warrants a waiver of the in-office interview such as illness, care of a household member, prolonged severe weather or work hours. If the in-office interview is waived, the State agency has the option to conduct a telephone interview or a home visit.

Section 330 of Pub. L. 100–435 amends section 11(e)(2) of the Food Stamp Act to explicitly specify, as the current rules do, the circumstances under which an applicant household must be waived from the in-office interview. The amendments are intended to assist some applicants (e.g., the elderly, disabled or rural poor) who may be eligible for participation in the Food Stamp Program but fail to submit or complete the application process because of transportation-related difficulties. Section 330, for the most part, adopts the current policy at 7 CFR 273.2(e) which specifies who may be waived from an in-office interview. However, in order for the regulations to be completely consistent with the law, some modification to the current rules is necessary.

Section 330 specifies that, in addition to considering the currently specified serious hardships, the State agency must also consider the hardships associated with living in a rural area and employment or training hours which may prevent an applicant from participating in a face-to-face interview in the certification office. Accordingly, this rule amends 7 CFR 273.2(e)(2) to include these two conditions as serious hardships warranting waiver of the in-office interview.

The Food Stamp Application Form—7 CFR 273.2(b)

Under section 11(e)(2) of the Food Stamp Act, and the regulations at 7 CFR 273.2(b), State agencies must use the food stamp application form designed by the Food and Nutrition Service (FNS) unless the State agency receives approval from FNS to deviate from the FNS food stamp application form. State agencies may deviate from the FNS food stamp application form in order to process joint applications with other assistance programs, meet the requirements of a State agency computer system or accommodate other State agency needs that are determined to be justifiable. State agency applications may be approved for these reasons provided the application is understandable and easy for applicants to use.

Whether the State agency uses the FNS application form or designs it own application, 7 CFR 273.2(b) requires that all applications contain: (1) A statement informing applicants that the information provided by the household is subject to verification by Federal, State and local officials and the consequences that may occur if information provided on the application is incorrect; (2) a description of the civil and criminal penalties for violations of the Food Stamp Act; (3) a statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application; and (4) a statement to be signed by all households members (adults must sign for children under 18 years of age) attesting, under penalty of perjury, to their citizenship or alien status.

Section 310 of Pub. L. 100–435 amends section 11(e)(2) of the Food Stamp Act concerning the content of the food stamp application form. The legislative history (Senate Report No. 100–397, p. 24) to these provisions reflects Congressional concern that some State agency designed applications—especially applications which allow the household to simultaneously apply for benefits in the Food Stamp, Aid to Families with Dependent Children (AFDC), and Medicaid Programs—are either too lengthy and complex for applicants to use or do not provide applicants with sufficient information concerning the food stamp application process. There is a concern that, as a result of this complexity, eligible households may be discouraged from applying for benefits.

The first provisions in section 310 concerns the approval of State agency applications which deviate from the FNS food stamp application form. This provision mandates that, in addition to its current criteria for approving State agency application forms, FNS must also ensure that the application is brief. Accordingly, this rule amends 7 CFR 273.2(b) to include brevity as a condition for approving deviations from the FNS food stamp application form.

The second provision requires that the Department, in consultation with the Department of Health and Human Services (HHS), to provide guidance to those State agencies requesting assistance in the development of brief, simply-written application forms, including forms that allow for simultaneous application to participate in the Food Stamp, AFDC, and Medicaid Programs. Accordingly, this rule amends 7 CFR 273.2(b) to advise the State agency of its option to request assistance from FNS when developing its application. The Department intends for State agencies to request this assistance through the Deputy Administrator for the Food Stamp Program. The Deputy Administrator, or the Deputy Administrator's designee, would oversee the review of an application form by FNS officials at the Regional level and would coordinate the review of the application form with the HHS. The Regional officials will be

responsible for coordinating between the State agency and National Office.

The last provision under section 310 requires that all applications for food stamp benefits contain certain statements which advise the household of important information about the application process. These required statements include: (1) A place on the front cover where applicants can write their names, addresses, and signatures; (2) instructions that advise the household of their right to file the application without finishing all parts; (3) a statement describing the expedited service procedures; and (4) a statement that informs the household that benefits are provided only from the date of application. Accordingly, this rule amends 7 CFR 273.2(b) to require that the food stamp application form contain the above information. The Department is also taking this opportunity to restructure 7 CFR 273.2(b) in its entirety in order to display all information required to be on the application form in a more readable and understandable format.

The current six-page food stamp application form (FNS–385) designed by FNS contains statements advising the household of their right to file the application and a general description of the expedited service procedures. However, the application form does not contain a statement informing the applicant household that benefits are provided from the date of application. The Department is currently revising the FNS–385 to include this statement and to provide a more specific description of the expedited service process. The Department will distribute the revised application to the State agencies as soon as this revision is completed.

Joint Processing of Applications—7 CFR 273.2(j)

As previously mentioned, Congress has serious concerns about complex application procedures which may discourage eligible households from participating in the Program. Therefore, in addition to procedures which ensure that the application is simple and easy for applicants to use, section 352 of Pub. L. 100–435 includes provisions which ensure that applicants for public assistance (PA) or general assistance (GA) are able to apply for food stamp benefits on the same application form. This section reinstates practices that were initially required under the original Food Stamp Act of 1977 but were subsequently made optional. To clarify the current change, the Department is providing a brief history of these provisions from the enactment of the Food Stamp Act of 1977 until the enactment of the Hunger Prevention Act of 1988.

Under section 11(i) of the Food Stamp Act of 1977 (Pub. L. 95–113, 91 Stat. 958, Sept. 29, 1977), the State agency was required to: (1) Conduct a single interview to determine the household's eligibility for food stamps and AFDC; (2) permit households in which all members are recipients of Supplemental Security Income (SSI) to apply for food stamp benefits by completing a simple application at the Social Security Office; (3) include the application for food stamps in the application for PA or GA for households in which all applicant household members were included in a PA or GA grant; and (4) certify households which had recently been denied or terminated from PA or GA on the basis of information that was available in the PA or GA casefile provided the information was sufficient for food stamp purposes. The intent of these provisions was to ensure that applicants would not have to repeat similar application procedures when applying for PA or GA and food stamp benefits at the same time.

In an attempt to relieve State agencies from certain administrative burdens while maintaining joint application procedures, the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253, 96 Stat. 763, Sept. 8, 1982) gave State agencies the option to implement sections 11(i) (3) and (4) noted above relative to combining the food stamp application with the PA or GA application and certifying recently denied or terminated PA or GA households based on information from the PA or GA casefile. The requirements relative to the single interview and the application procedures for pure SSI households continued to be mandatory.

Section 352 of Pub. L. 100–435 reflects a renewed desire to streamline the application process for applicant food stamp households. As a result, State agencies are required to implement the previously optional provisions under section 11(i) (3) and (4) of the Food Stamp Act of 1977, as amended. In addition, section 352 requires that the State agency notify all AFDC applicants of their right to apply for food stamps at the same time that they apply for AFDC benefits.

Accordingly, this rule amends 7 CFR 273.2 (j) and (j)(1)(i) to require the State agency to combine the application for food stamps with the application for PA and GA and to notify AFDC applicants of their right to file a joint application. This rule also amends 7 CFR 273.2(j)(1) to add a new paragraph (j)(1)(v), which specifies that households whose PA/GA applications are denied or PA/GA eligibility terminated shall not be required to file a new application, but shall have their food stamp eligibility and benefits determined by available information from the PA/GA casefile provided the information is suffient for food stamp purposes.

Application Process—Verification—7 CFR 273.2(f) and 273.21(j)

Current rules at 7 CFR 273.2(f) define verification as the use of third-party information or documentation to establish the accuracy of statements on the application. Information regarding gross non-exempt income, social security numbers, residency and the identity of the household member making the application must be verified by the State agency prior to certifying any applicant household for benefits. If applicable, the State agency must also verify the household's utility expenses, medical expenses and the alien status or disability of individual household members. Finally, the State agency must verify other factors of eligibility it determines are questionable, such as household composition.

There are three sources of verification currently identified in 7 CFR 273.2(f)(4). The first source is documentary evidence which consists of the written confirmation of a household's circumstances. The second source is a collateral contact, or the oral confirmation of a household's circumstances. The last source—which is used only when the other sources are insufficient to make a firm determination of eligibility—is a prearranged home visit.

Under the current rules at 7 CFR 273.2(f)(5), the household is primarily responsible for providing documentation to verify its income and to resolve any questionable information. However, if it would be difficult or impossible for the household to obtain documentary evidence in a timely manner, or if the household has provided insufficient documentation, the State agency must either offer assistance to the household, use a collateral contact, or arrange a home visit.

Section 311 of Pub. L. 100–435 contains five provisions which amend section 11(e)(3) of the Food Stamp Act. The first provision, section 311(A), requires the State agency to provide all applicant households with a clear written statement explaining what the household must do to cooperate in obtaining verification and completing the application. The second and third provisions, sections 311 (B) and (E), require the State agency to help

households obtain required verification when the household is cooperating with the State agency to complete the application process. The fourth provision, section 311(C), prohibits the State agency from requiring the applicant household to submit additional verification when the household has provided adequate sources of verification unless the State agency determines that the verification is inaccurate, incomplete, or inconsistent. Lastly, section 311(D) prohibits the denial of an application solely because a person outside of the household (who is not a person outside of the household because of a specific disqualification action or ineligible status) fails to cooperate with the State agency's processing of the application.

The legislative history (House Report No. 100–828, p. 23 and Senate Report No. 100–397, pp. 24–25) suggests that the above provisions should reduce error rates, establish uniform verification standards, and remove the possibility that households will be subject to excessive verification requirements.

In order to bring current rules into conformity with sections 311 (A), (B), and (E) of Pub. L. 100–435, this rule amends 7 CFR 273.2 to add a new paragraph (c)(5), which specifies the State agency requirements pertinent to the written statement. Under this provision, the State agency shall provide the household at each certification and recertification with a written statement that advises the household of the verification that must be submitted in order to be certified for food stamp benefits. In addition, the notice shall advise the household that the State agency will help the household obtain the required verification provided the household is cooperating with the State agency to complete the application. Also, the notice shall be written in clear and simple language and meet the bilingual requirements described in 7 CFR 272.4(b).

The Department is allowing the State agencies to design their own written statement. However, the Department encourages the State agencies to develop a general written statement that could be given to all applicant households, rather than a written statement which would need to be tailored to each applicant household. This would ensure that applicant households are treated consistently and would prevent the possibility that households are subject to multiple verification requests.

In addition, current rules at 7 CFR 273.2(h)(1)(i) specify the criteria the State agency must use to determine if the household or State agency caused a delay in processing the application. Consequently, this rule makes a conforming amendment to 7 CFR 273.2(h)(1) to add a new paragraph (h)(1)(i)(C), which includes the requirement that the State agency must consider whether or not the State agency provided the household with the statement of required verification when determining if a delay in the application process was caused by the State agency or the household.

In respect to the fourth provision, section 311(C), the legislative history (House Report No. 100–828, p. 23) indicates that the intent of this provision is to prevent the State agency from requiring the household to provide multiple sources of verification when the household has already provided verification which adequately supports statements on the application. However, the State agency under this section may require the household to provide additional verification when the State agency determines that existing verification is incomplete, inaccurate or inconsistent.

Accordingly, this rule amends the verification standards for recertification at 7 CFR 273.2(f)(8)(i) (A) and (C), when changes are reported between certification actions at 7 CFR 273.2(f)(8)(ii), and for households subject to monthly reporting and retrospective budgeting (MRRB) at 7 CFR 273.21(i) (1) and (3) and (j)(3)(iii)(B). These changes specifically provide that the State agency cannot request verification for information when the household has provided sufficient verification or existing verification in the casefile adequately verifies the household's current circumstances. However, the State agency may request additional verification if the State agency determines that the verification provided by the household is incomplete, inaccurate, outdated, or inconsistent with recently reported information.

Finally, in respect to section 311(D), this rule amends 7 CFR 273.2(d)(1) to provide that the household may not be determined ineligible when a member outside of the household fails to cooperate with a request for verification. However, in accordance with section 311(D), this provision of the rule provides that the provision shall not apply when the person refusing to cooperate: (1) Is a member outside of the household because the person is either an ineligible student, ineligible alien, or SSI recipient in a "cash-out" State; or (2) has been disqualified for an intentional Program violation, a workfare sanction, or noncompliance with work requirements. The legislative history (Senate Report No. 100–397, pp. 24–25) indicates that these nonhousehold members cannot be considered as persons outside the household because they would othewise be a household member if not for a specific disqualification or ineligible status. Because the legislative history is specific about the treatment of nonhousehold members who would othewise be included as a member in the food stamp household, it is the Department's view that two other categories of nonhousehold members who cannot be considered as a person outside of the household need to be included. These two categories are: individuals disqualified for failure to provide an SSN and persons who fail to attest to their citizenship or alien status. Accordingly, this rule amends 7 CFR 273.2(d)(1) to include a regulatory reference to 7 CFR 273.1(b)(2) to reflect this decision.

Demonstration Projects/Cash-Outs in Other Benefit Programs—7 CFR 273.9(c)(1) and 273.10(d)(1)

Current rules at 7 CFR 273.9 identify the sources of income that are either included or excluded from income in the determination of a household's food stamp eligibility and benefit level. One income exclusion specified under 7 CFR 273.9(c)(1) is any gain or benefit which is not in the form of money payable directly to the household, including nonmonetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden, and vendor payments. Direct cash payments, however, are not excluded from income under 7 CFR 273.9 and therefore must be included in the determination of a household's food stamp eligibility and benefit level.

In order to test methods which may improve benefit delivery in other assistance programs, State agencies may conduct federally authorized demonstration projects which are established through Federal legislation or which are created by the waiver of provisions of Federal law. Should a State agency, as a condition of the demonstration project, convert an in-kind or vendor payment to a direct cash payment, the payments would no longer be excluded from income but would be included in the food stamp eligibility and benefit level computations. Thus, under current rules, if a food stamp household is participating in a demonstration project which converts an indirect payment to a direct cash payment, the household could experience a decrease in its food stamp

benefit level or could lose its eligibility for food stamps.

The legislative history to Pub. L. 100–435 (Senate Report No. 100–397, pp. 27–28 and House Report No. 100–828, pp. 24–25) reveals Congressional concerns in ensuring that State agencies have the flexibility to test alternate ways to deliver benefits in other assistance programs without adversely affecting those food stamp households which are participating in a federally authorized demonstration project. Section 340 of Pub. L. 100–435, in reponse to these concerns, amends section 5(d)(1) of the Food Stamp Act to specify that any income which would normally be excluded under 7 CFR 273.9(c)(1), but has been converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project, must continue to be excluded from income in the determination of a household's food stamp eligibility and benefit level. This would also apply to demonstration projects created by the waiver or provision of Federal law.

Accordingly, this rule amends 7 CFR 273.9(c)(1) to specify that in-kind or vendor payments which would normally be excluded as income but are converted in whole, or in part, to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by waiver of the provisions of Federal law) shall continue to be excluded from income.

This rule also addresses how expenses would be handled if an excluded vendor payment is converted to a direct cash payment under the approval of a federally authorized demonstration project. Under current rules at 7 CFR 273.10(d)(1)(i), any excluded vendor payment is not deductible as a household expense. Thus, in order to ensure that excluded vendor payments which have been converted to a direct cash payment are treated as an excluded vendor payment, this rule amends 7 CFR 273.10(d)(1)(i) to specify that expenses covered by an excluded vendor payment which is converted to a direct cash payment under the approval of a federally authorized demonstration project is not a deductible household expense.

Specified Procedures for Claiming the Medical Deduction—7 CFR 273.9, 273.12 and 273.21

Current rules at 7 CFR 273.9(d)(3) allow elderly and disabled household members as defined in 7 CFR 271.2 to claim certain medical expenses exceeding $35 as an income deduction. Other household members who are not elderly or disabled cannot claim their medical costs as a deduction.

Unless the household is subject to Monthly Reporting and Retrospective Budgeting (MRRB), the State agency must, in accordance with 7 CFR 273.12(a), calculate the medical deduction based on expenses the household expects to be billed for during the certification period. These households, in turn, are required to report any changes of more than $25 in allowable medical expenses.

Households subject to MRRB are required to report and verify their allowable medical expenses monthly. However, because the MRRB procedures exclude households in which all adult members are elderly and disabled and have no earned income, most households which are eligible to receive an excess medical deduction are excluded from MRRB procedures.

The determination of the medical deduction and the requirements related to reporting changes in medical expenses have proven difficult for both participating households and State agencies. For example, households sometimes neglect to report information which would ensure that they receive the amount of benefits to which they are entitled. Similarly, State agencies have requested clarification of the requirements related to reporting changes in medical deductions because they are liable for errors resulting in the calculation of the medical deduction.

In order to reduce these administrative burdens and ensure that the medical deduction is properly applied to all households which are eligible to receive the deduction, section 351 of Pub. L. 100–435 amends section 5(e) of the Food Stamp Act and requires the State agency to offer eligible households a method for claiming a deduction for recurring medical expenses in place of provisions that require the household to report and verify expenses monthly. Legislative history surrounding this provision in the Hunger Prevention Act (House Report No. 100–828, p. 26) indicates that Congress intended this method to replace current reporting and verification procedures for those households subject to MRRB and, in its place, require these MRRB households to report changes in recurring medical expenses periodically.

In order to conform to the requirements of section 351, the Department is changing current reporting and verification requirements for allowable medical expenses under the MRRB system. Under this rule, households subject to MRRB are now given the option of reporting and verifying all medical expenses monthly as currently required under the MRRB procedures, or of reporting and verifying only those changes in medical expenses during the certification period which exceed $25. Whichever option is chosen, the household is only required to report changes on the monthly report. The State agency is not allowed to require the household to report changes outside of the monthly report. Accordingly, this rule amends 7 CFR 273.21(h) (3)(i) and (3)(ii), (i)(1), and (j)(3)(iii) to specify the household's options with regard to reporting and verifying medical expenses in an MRRB system.

In addition to the above change which is required as a result of Pub. L. 100–435, the Department believes that another change to the current regulations at 7 CFR 273.12(a)(1)(vi) would simplify reporting changes in medical expenses. This rule requires that changes in total medical expenses greater than $25 must be reported, as opposed to a $25 change in each individual allowable medical expense. For instance, under this requirement, if the household incurs a new ongoing $50 medical expense at the same time the household stops incurring an ongoing $40 expense, the household would not be required to report either change because the total change is $10. However, if the household incurs two new ongoing expenses of $20 each, the household would be required to report both changes because the total change is greater than $25. Currently, the household is required to report the two changes in the first example although the effect of the changes is minimal. The changes in the second example are not required to be reported under current rules even though the total effect of the changes is a $40 difference. The Department has received numerous policy requests which indicate that the current requirements are confusing in certain situations. Accordingly, this rule amends 7 CFR 273.12(a)(1)(vi) to specify that changes greater than $25 in *total* medical expenses must be reported. A conforming amendment is made to 7 CFR 273.21(h)(3) to also reflect this policy for MRRB households.

Taken together, the Department believes the above changes satisfy the legislative requirement that households be provided with a method to report and verify recurring medical expenses and further simplify the requirements surrounding the medical deduction. However, given the complexity of this area, the Department welcomes any comments or recommendations which may provide alternative methods for eligible households to claim the medical deduction.

Reporting Responsibilities—7 CFR 273.12 and 273.21

Certified households which are not subject to MRRB must report changes in household circumstances within 10 days of the date the change occurs. The current rules at 7 CFR 273.12(a) identify the types of changes in household circumstances these certified households are required to report during the certification period. This method is known as "change reporting." Households subject to change reporting must be provided with a report form under 7 CFR 273.12(b)(1) at certification, recertification or whenever the household needs a new form. Households subject to the MRRB provisions in 7 CFR 273.21 must report changes monthly on the monthly report.

Section 323 of Pub. L. 100–435 amends section 11(e) of the Food Stamp Act and requires the State agency to provide a household, at the time of certification and recertification, with a statement describing the household's reporting responsibilities. Moreover, this section of the Act requires that the State agency provide all households with a toll-free number or a telephone number where collect calls will be accepted in order for the household to reach an appropriate representative of the State agency. The legislative history of Pub. L. 100–435 (Senate Report No. 100–397, p. 25) indicates that the intent of these provisions is to clearly inform a household of its reporting responsibilities and to increase a household's access to the State agency in order for the household to obtain information or report changes. By providing easier access to local offices, households would report more accurate information regarding their food stamp eligibility, and thus reduce the possibility of errors. Accordingly, this rule amends 7 CFR 273.12(b)(1) to specifically require the "change report" from to include a statement describing the household's reporting responsibilities as specified under 7 CFR 273.12(a)(1). In addition, this rule amends 7 CFR 273.12(b)(1) to specify that the "change report" from must contain the number of the Food Stamp Office and a toll-free number or a number where collect calls will be accepted.

The Department's model "change report" form (Form FNS–387) already contains the current list of changes households should be reporting in accordance with 7 CFR 273.12. However, the form does not specifically provide that the household is required to report the changes listed. While State agencies are not required to use this model form, some State agencies do use it, therefore, the Department will revise the form to clarify that the list of changes in household circumstances contained on the form are *required* to be reported by the household. The revised FNS–387 will be distributed to the State agencies as soon as this revision is completed.

In respect to MRRB, current rules at 7 CFR 273.21 require that the State agency provide MRRB households with a toll-free number at certification in order for the households to ask questions regarding the monthly report. Current rules also require the State agency to provide the applicant households with a copy of a monthly report and a written description of how the report must be completed.

As a result of section 323, this rule amends 7 CFR 273.21(c)(5) to allow the State agency to provide either a toll-free number or a number where collect calls will be accepted. Also, because section 323 requires that a household be provided with the number for both certifications and recertifications, this rule amends 7 CFR 273.21(c) to specify that a toll-free or collect-call number must be provided at all certifications and recertifications. Finally, the current rules already require households subject to MRRB to receive a statement describing the household's reporting responsibilities. Therefore, the Department is not making any further revisions to 7 CFR 273.21(c)(5).

The Department is also amending the provisions relative to the Bilingual Notices, the Notice of Eligibility, the Notice of Denial, and the Notice of Adverse Action. These notices currently contain the telephone number of the Food Stamp Office. As a result of section 323 of Pub. L. 100–435, the Department believes that these notices also must include either a toll-free number or a number where collect calls will be accepted for those households living outside the local calling area. Therefore, this rule amends 7 CFR 272.4(b)(3)(ii)(B), 7 CFR 273.10(g)(1)(i)(A), 7 CFR 273.10(g)(1)(ii) and 7 CFR 273.13(a)(2), respectively, to specify that notices must contain either a toll-free number or a number where collect calls will be accepted.

Special Provisions for Farm Households—7 CFR 273.8, 273.11 and 273.21

Public Law 100–435 contains two provisions which will extend eligibility to farm households which are in need of program assistance but are determined ineligible due to current requirements relating to the treatment of income, deductions or resources.

The first provision, section 341 of Pub. L. 100–435, amends section 5(f)(1)(A) and specifies that self-employed farm households which incur irregular expenses must be given the option to average the income and expenses from the farm operation over a 12-month period. Under 7 CFR 273.11 of the current rules, self-employed farmers who are not subject to MRRB and receive income which represents the household's annual income, regardless of whether it is received monthly or more or less often than monthly, have the farm income annualized over a 12-month period. In accordance with current policy, self-employment income and expenses are annualized over a 12-month period.

These standards do not apply to farm households which are subject to MRRB and receive self-employment farm income monthly. These households must have their farm income counted in the month it is received and have their expenses counted in the month in which the expense is billed or otherwise becomes due. Thus, farm households subject to MRRB which incur irregular expenses may alternate between eligibility and ineligibility for food stamp benefits while other farm households which are allowed to average fluctuating expenses maintain their eligibility for food stamp benefits.

In order to eliminate this inconsistency in the treatment of farm income, section 341 of Pub. L. 100–435 requires that self-employed farm households be given the option of averaging income and expenses over a 12-month period (i.e., annualizing income and expenses). Accordingly, this rule amends 7 CFR 273.21(f)(2)(i) to specify that self-employed farm households which are subject to MRRB have the option to annualize their self-employment income and expenses over a 12-month period. A conforming amendment is made to the self-employment provisions at 7 CFR 273.11 by adding a new paragraph (f)(1)(v) to address this specific household option.

The second provision, section 342 of Pub. L. 100–435, addresses those households which are in the process of terminating their self-employment from farming. Under current rules at 7 CFR 273.8(b), households with resources which exceed $2000 ($3000 for households with an elderly member) are not eligible to participate in the program. Current rules at 7 CFR 273.8 (c), (d), and (e) identify the resources which are included and excluded in the determination of a household's eligibility. For self-employed households, property that is essential to

self-employment (e.g., farm land and farm equipment or tools of a tradesman) is excluded in the resource determination of the household's eligibility as long as the household continues to be self-employed. Under current policy, once the household terminates its self-employment, excluded property continues to be excluded if the person intends to return to farming. No specific timeframe is established. For households which do not intend to return to farming, the excluded property is included in the resource determination from the date the household terminates its self-employment. To establish a time limit, section 342 of Pub. L. 100–435 provides that property essential to the self-employment of a household member engaged in farming would continue to be excluded as a resource for one year after a farm household has stopped farming.

Accordingly, this rule amends 7 CFR 273.8(e)(5) to specify that property essential to self-employment of a household member engaged in farming is excluded as a resource for one year from the date the household member terminates his/her self-employment from farming. A conforming amendment is also made to 7 CFR 273.8(h)(1)(i) to specify that any licensed vehicle which had been used over 50 percent of the time in the self-employment of a household member engaged in farming continues to be excluded as a resource for one year from the date the household member terminates his/her self-employment from farming.

Delivery of Benefits to Households Applying After the Fifteenth of the Month—7 CFR 274

Section 203 of Pub. L. 100–435 amends section 8(c) of the Food Stamp Act and requires State agencies to make available to eligible households which apply after the fifteenth of the month prorated benefits for the month of application and benefits for the first full month of participation in a combined allotment. Accordingly, this rule amends 7 CFR 274.2 (b)(2) and (b)(3) to address this statutory requirement. The rule neither changes the method of calculating benefit amounts, nor modifies current standards for application verification.

For eligible households applying under regular certification procedures (i.e., non-expedited service households), this rule clarifies that the combined allotment must be provided within thirty days after the date of application. If the application has not been completed or all information has not been verified within 30 days, no combined benefits will be issued.

Under current rules at 7 CFR 273.2(i), eligible households which are entitled to expedited service must receive the prorated initial benefits within five days after the date of application. Under section 203 of Pub. L. 100–435, if the application is complete and all verification has been made within that five-day period, the combined allotment shall be issued at that time. If, at the end of the five-day period after the date of application, all verification has not been made, only the prorated benefits for the month of application will be issued. As soon as the verification has been completed, the benefits for the first full month of participation must be issued in accordance with 7 CFR 273.2(i)(4)(iii).

The verification requirements remain unchanged in the new benefit delivery schedules because section 203 only applies to "eligible households." Adherence to the normal requirements for verification is underscored by further reference to eligible households in the legislative history for section 203 of Pub. L. 100–435 (Senate Report No. 100–397, p. 23). The report states that, "[t]he allotment is for the remaining portion of the month in which they apply and for the next month (if they are eligible for benefits in that month)." Therefore, the household's eligibility for benefits in the first full month is not established until verification is complete. Accordingly, this rule amends 7 CFR 274.2 to add a new paragraph (b)(4) which provides that the provision for a combined allotment does not apply to households for which missing or postponed verification has not been received or to households determined ineligible for benefits for the initial application month or the next subsequent month.

In discussing this section's requirement for an "aggregate" allotment, the Senate Report described the Congressional expectation to assure a more timely delivery of initial benefits to eligible households, and to afford State agencies the opportunity to reduce costs associated with benefit delivery (Senate Report No. 100–397, p. 23). In this light the Department will allow State agencies the discretion as to the form of the combined benefit provided by the Section 203, so long as the total amount of benefits is provided at the same time. This would mean that a State agency using mail issuance, may mail the combined issuance in two envelopes; a State agency using an authorization document (ATP) system may issue two documents, for the two months, at the same time.

Section 8(c) of the Food Stamp Act, as amended, and current regulations at 7 CFR 273.10(iii)(C) provide that "no allotment may be issued to a household for the initial month or period if the value of the allotment * * * is less than $10." This provision is not superceded by Section 203 of Pub. L. 100–435 and continues to apply. Therefore, under the provisions of this rule, eligible households whose benefit amount is less than $10 in the initial month of application would receive the next full month's benefit more quickly, but the allotment cannot include the initial month's benefit of less than $10. Accordingly, this rule adds a reference to 7 CFR 273.10(iii)(C) to the new paragraph 7 CFR 274.2(b)(4) to clarify this policy.

Section 203 of Pub. L. 100–435 supersedes the current provisions found at 7 CFR 274.2, paragraphs (b)(2) and (b)(3), which stipulates that eligible households (regular and expedited service) which apply after the fifteenth of the month shall receive benefits for the first full month of participation by the eighth day of the first full month, if any benefits were issued in the month of application.

Implementation—7 CFR 272.1(g)

Under section 701 of Pub. L. 100–435, the provisions contained in § 274.2(b) of this rule are effective January 1, 1989, to be implemented by State welfare agencies no later than January 1, 1990.

Under section 701 of Pub. L. 100–435, the remaining provisions of this rule are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits on or after that date. The rule provides that the current caseload will be converted to these remaining provisions at recertification, at household request or when the case is next review, whichever occurs first and restored benefits provided back to July 1, 1989 or the date of the food stamp application, whichever occurred later. In addition, the rules provide that households which applied for Program benefits between July 1, 1989 and the date the State agency implements these remaining provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the food stamp application, whichever occurred later, if the household is otherwise entitled to benefits, and requests a review of its case or the State agency otherwise becomes aware that a review is needed.

Quality Control

Any variance resulting from the application of this regulation will be handled in accordance with 7 CFR 275.12 of the current rules.

List of Subjects

7 CFR Part 271

Administative practice and procedure, Food stamps, Grant programs—Social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 274

Administative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 272, 273, 274 and 277 are amended as follows:

1. The authority citation of Parts 271, 272, 273, 274 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND REGULATIONS

2. In § 271.2 the definition of "Elderly or disabled member" is amended by adding a new paragraph (11) to read as follows:

§ 271.2 Definitions.

* * * * *

"Elderly or disabled member" * * *

(11) Is a recipient of interim assistance benefits pending the receipt of Supplemented Security Income, disability related medical assistance under title XIX of the Social Security Act, or disability-based State general assistance benefits *provided* that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

* * * * *

3. In § 271.8, a paragraph designation and corresponding OMB Control Number for § 272.5, paragraph (c), is added in numerical order to read as follows:

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
* * * * *	
272.5(c)	0584–0063
* * * * *	

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

4. In § 272.1, a new paragraph (g)(110) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(110) *Amendment No. 316.* State welfare agencies shall implement the provisions of *Amendment No. 316* as follows:

(i) the provisions contained in § 274.2(b) of *Amendment No. 316* are effective retroactively to January 1, 1989 and shall be implemented by State welfare agencies no later than January 1, 1990 for all households which newly apply for Program benefits or apply for recertification on or after that date.

(ii) The remaining provisions are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits or apply for recertification on or after that date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first and restored benefits shall be provided, if appropriate, back to July 1, 1989 or the date of the application, whichever is later. Additionally, households which applied for Program benefits between July 1, 1989 and the date the State agency implemented these provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the application, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that a review is needed.

5. In § 272.2, the seventh sentence of paragraph (a)(2) is amended by adding the phrase "the optional plan for Program informational activities directed to low-income households," after the phrase "Nutritional Education Plan," and a new paragraph (d)(1)(ix) is added to read as follows:

The additions read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) *Planning Documents.*

(1) * * *

(ix) A plan for Program informational activities as specified in § 272.5(c).

* * * * *

6. In § 272.4:

a. Paragraph (b)(3)(ii)(B) is amended by replacing the phrase, "the telephone number to call for more information." with the phrase, "the telephone number (toll-free number or a number where collect calls will be accepted for households outside the local calling area) which the household may call to receive additional information.".

b. Paragraph (d)(1)(i) is amended by adding a sentence to the end of that paragraph.

c. Paragraph (d)(2) is redesignated as paragraph (d)(3) and a new paragraph (d)(2) is added.

The additions and revisions read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(d) *Training.*

(1) * * *

(i) * * * Training must convey the goals and methods for promptly and accurately certifying eligible households.

* * * * *

(2) *Additional training.* At their option, State agencies may provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps.

* * * * *

7. In § 272.5, paragraph (c) is revised to read as follows:

§ 272.5 Program informational activities.

* * * * *

(c) *Program informational activities for low-income households.* At their option State agencies may carry out and claim associated costs for Program informational activities designed to inform low-income households about the availablity, eligibility requirements, application procedures, and benefits of the Food Stamp Program. Program informational materials used in such activities shall be subject to § 272.4(b),

which pertains to bilingual requirements. Before FNS considers costs for such activities eligible for reimbursement at the fifty percent rate under Part 277, State agencies shall obtain FNS approval for the attachment to their Plans of Operation as specified in § 272.2(d)(1)(ix). In such attachments, State agencies shall describe the subject activities with respect to the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. State agencies shall update this attachment to their Plans of Operation when significant changes occur and report projected costs for this Program activity in accordance with § 272.2 (c), (e), and (f).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

8. In § 273.2:

a. Paragraph (b) is revised in its entirety.

b. Paragraph (c)(5) is redesignated as paragraph (c)(6) and a new paragraph (c)(5) is added.

c. Paragraph (d)(1) is amended by adding two new sentences to end of the paragraph.

d. The fourth sentence of paragraph (e)(2) is revised.

e. A new paragraph (f)(1)(viii)(A)(*6*) is added.

f. Paragraph (f)(5)(i), paragraph (f)(8)(i)(A), the first two sentences of paragraph (f)(8)(i)(C), and paragraph (f)(8)(ii) are revised.

g. The last sentence of paragraph (g)(2) is amended by removing the phrase, "when required,".

h. The first sentence of paragraph (h)(1)(i)(C) is revised.

i. The first and last sentences of the introductory text of paragrpah (j) are revised, the first two sentences of paragraph (j)(1)(i) are removed and three new sentences are added in their place, and a new paragraph (j)(1)(v) is added.

The additions and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food Stamp application form.*—(1) *Content.* Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

(iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application;

(iv) A statement to be signed by each household member attesting, under penalty of perjury, to his or her citizenship or alien status (adults shall sign for household members under 18 years of age; however, if there are no adult members in the household, the applicant shall sign the statement for himself or herself and for all other members in the household who are under 18 years of age);

(v) A place on the front page of the application where the applicant can write his/her name, address and signature;

(vi) In plain and prominent language on the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative;

(vii) In plain and prominent language on the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section; and

(viii) In plain and prominent language on the front page of the application, notification that benefits are provided from the date of application.

(2) *Income and eligibility verification system (IEVS).* All applicants for food stamp benefits shall be notified at the time of application and at each recertification through a written statement on or provided with the application form that information available through the State income and eligibility verification (IEVS) will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. All applicants shall also be notified on the application form that the alien status of any household member may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information received from INS may affect the household's eligibility and level of benefits.

(3) *Deviations.* All State agencies shall use an application form designated by FNS. FNS may approve a deviation from that form to accommodate the use of a combined PA/food stamp application form, the requirements of a computer system, or other exigencies for which the State agency can submit adequate justification, provided the form is brief, understandable to applicants and easy to use. State agencies may request assistance from FNS in the development of a brief, simply-written and readable application, including application forms which cover the Food Stamp Program and the Aid to Families with Dependent Children Program or the Medicaid Program.

(c) *Filing an application.* * * *

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter.

* * * * *

(d) *Household Cooperation.* (1) * * * The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

* * * * *

(e) *Interviews.* * * *

(2) * * * These hardship conditions include, but are not limited to: illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. * * *

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(viii) *Disability.*

(A) * * *

(*6*) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide

proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

* * * * *

(5) *Responsibility of obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency shall assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall not require the household to present verification in person at the food stamp office. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application.

* * * * *

(8) *Verification subsequent to initial certification.* (i) *Recertification*—(A) At recertification the State agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than $25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

* * * * *

(C) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. * * *

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income, total medical expenses or actual utility expenses which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

* * * * *

(h) *Delays in processing.* * * *

(1) *Determining cause.* * * *

(i) * * *

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification. * * *

* * * * *

(j) *PA, GA and categorically eligible households.* Households applying for public assistance (PA) shall be notified of their right to apply for food stamp benefits at the same time and shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. * * * Households in which all members are applying for State agency administered GA benefits shall be allowed to apply for food stamps at the same time they apply for GA benefits but shall not be considered catgorically eligible for food stamps.

(1) *Applicant PA households.* (i) The application for PA shall contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility shall be contained in the PA form or shall be an attachment to it. The joint PA/food stamp application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, waives the notice of adverse action as specified by both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section. * * *

* * * * *

(v) Households whose PA applications are denied shall not be required to file new food stamp applications but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

* * * * *

9. In § 273.8:

a. Paragraph (e)(5) is amended by adding one sentence to the end of the paragraph.

b. Paragraph (h)(1)(i) is amended by replacing the semicolon with a period and adding a new sentence to the end of the paragraph.

The additions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(5) * * * Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

* * * * *

(h) *Handling of licensed vehicles.* * * *

(1) * * *

(i) * * * Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;

* * * * *

10. In § 273.9, a new sentence is added between the first and second sentences of paragraph (c)(1) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions* * * *

(1) * * * In-kind or vendor payments which would normally be excluded as income as specified in this section but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by the waiver of provisions of Federal law) shall also be excluded from income. * * *

* * * * *

11. In § 273.10:

a. A new sentence is added between the second and third sentences of paragraph (d)(1)(i).

b. The fourth sentence of paragraph (g)(1)(i)(A) and the first sentence of paragraph (g)(1)(ii) are amended by adding the phrase, "(a toll-free number or a number where collect calls will be accepted for households outside the local calling area)" after the phrase, "the telephone number of the food stamp office".

The addition reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.* (i) * * * In addition, an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. * * *

* * * * *

12. In § 273.11, a new paragraph (a)(1)(v) is added to read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

(1) *Annualizing self-employment income.* * * *

(v) Notwithstanding the provisions of paragraphs (i) through (iv) of this paragraph, households subject to MRRB who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income shall have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

* * * * *

13. In § 273.12:

a. Paragraph (a)(1)(vi) is revised.

b. Paragraph (b)(1)(ii) is amended by removing the word "and" following the semicolon.

c. Paragraph (b)(1)(iii) is amended by replacing the period at the end of the sentence with a semicolon.

d. Paragraph (b)(1) is amended by adding two new paragraphs (b)(1)(iv) and (b)(1)(v).

The additions and revisions read as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.*

(1) * * *

(vi) Changes greater than $25 in the total amount of allowable medical expenses.

* * * * *

(b) *Report form.*

(1) * * *

(iv) The number of the food stamp office and a toll-free number or a number where collect calls will be accepted for households outside the local calling area; and

(v) A statement describing the changes in household circumstances contained in § 273.12(a)(1) that must be reported and a statement which clearly informs the household that it is required to report these changes.

* * * * *

14. In § 273.13, paragraph (a)(2) is amended by replacing the phrase "the telephone number" with the phrase, "the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area)".

15. In § 273.21:

a. The introductory text of paragraph (c) and paragraph (c)(5) are revised.

b. A new sentence is added to the end of paragraph (f)(2)(i).

c. Paragraphs (h)(3)(i) and (h)(3)(ii) are amended by removing the word "medical,".

d. Paragraph (h)(3)(iii) is redesignated as paragraph (h)(4) and a new paragraph (h)(3)(iii) is added.

e. Newly designated paragraph (h)(4) is amended by adding a heading after the designation of "(4)" to read, "*Combined form.*"

f. Paragraph (i)(1) is amended by adding the phrase "changes in" before the words "utility expenses" and by adding the phrase "all allowable medical expenses (unless the household elects the option of reporting changes of more than $25 in total allowable medical expenses)," in place of the phrase, "medical expenses,".

g. Paragraph (i)(3) is revised.

h. Paragraph (j)(3)(iii)(B) is amended by adding the phrase "a change in" after the phrase, "does not verify."

i. Paragraph (j)(3)(iii)(C) is revised, paragraph (j)(3)(iii)(D) is redesignated as paragraph (j)(3)(iii)(E) and a new paragraph (j)(3)(iii)(D) is added.

The additions and revisions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(c) *Information on MRRB.* At the certification and recertification interview, the State agency shall provide the household with the following:

* * * * *

(5) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

* * * * *

(f) *Calculating allotments for households not suffering serious hardship.* * * *

(2) *Income and deductions.* * * *

(i) * * * Except that, households which receive self-employment income from a farm operation monthly but incur irregular expenses to produce such self-employment farm income shall be given the option to annualize the self-employment farm income and expenses over a 12-month period.

* * * * *

(h) *The monthly report form.* * * *

(3) *Reporting information.* * * *

(iii) either all allowable medical expenses each month or changes of greater than $25 in total allowable medical expenses.

* * * * *

(i) *Verification.* * * *

(3) The State agency may require the household to verify any other information on the monthly report. However, the State agency shall not require the household to verify such other information which has not changed since the last report unless the State agency believes the information is inaccurate, incomplete, outdated, or inconsistent with other casefile information.

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(C) If the household which has elected to report allowable medical expenses monthly does not verify its monthly allowable medical expenses, the State agency shall not allow a deduction.

(D) If a household which has elected to report changes of greater than $25 in allowable medical expenses does not verify a reported change, the State agency shall not allow a deduction.

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

15. In § 274.2, paragraphs (b)(2) and (b)(3) are revised and a new paragraph (b)(4) is added.

The addition and revisions read as follows:

§ 274.2 Providing benefits to participants.

* * * * *

(b) *Newly-certified households.* * * *

(2) *Households certified under the normal processing timeframes.* Households which apply for initial months benefits (as described in § 273.10(a)) during the last 15 days of the month who have completed the application and provided all required verification within 30 days of the date of application *and* have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. State agencies may opt to provide both

months' benefits in one combined allotment or as separate allotments so long as they are provided at the same time and within the timeframe specified in § 273.2(g).

(3) *Households certified under the expedited service processing timeframes.* Households which apply for initial benefits (as described in § 273.10(a)) during the last 15 days of the month under the expedited service procedures in § 273.2(i) who have completed the application and provided all required verification within the 5-day expedited service time limit *and* have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. State agencies may opt to provide both months' benefits in one combined allotment or as separate allotments so long as they are provided at the same time and within the timeframe specified in § 273.2(i).

(4) *Households not entitled to combined allotments.* The provisions of paragraphs (b)(2) and (b)(3) of this section do not apply to households determined ineligible to receive benefits for the initial month of application or the next subsequent month or to households for which missing verification or postponed verification have not been provided. Households eligible for expedited service under § 273.2(i) may, however, receive benefits for the initial month under the verification standards set forth in § 273.2(i)(4). Additionally, in accordance with § 273.10(a)(iii)(C), benefits of less than $10 shall not be issued under the provisions of paragraphs (b)(2) and (b)(3) of this section.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

16. In § 277.4, a new paragraph (f) is added to read as follows:

§ 277.4 Funding.

* * * * *

(f) The expenses (e.g. travel, lodging, meals) of persons working with the organizations which receive training and assistance pursuant to § 272.4(d)(2) are not allowable.

Appendix A to Part 277—[Amended]

17. In appendix A to Part 277, under Standards for Selected Items of Cost, paragraph C.(14) is removed.

Date: May 30, 1989.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 89-13295 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-30-M

federal register

Wednesday
June 7, 1989

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 14, 1987, an arbitration panel rendered a decision in the matter of Don Hudson and Richard Jack, vendors, v. State of Colorado Department of Social Services, a "State Licensing Agency" (SLA) designated by the Secretary of Education. This panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioners Don Hudson and Richard Jack on December 23, 1986 (Docket No. R–S/87–7).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the SLA. If the licensee is dissatisfied with the State agency decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street, SW., Washington, DC 20202–2738, Area Code (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: June 2, 1989.

Patricia McGill Smith,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

The origin of this arbitration is a dispute between two licensed blind vendors, Don Hudson and Richard Jack, and the Business Enterprise Program (BEP), a component of the Colorado Department of Social Services, the State Licensing Agency (SLA) for Colorado, on the number of blind vendors who should be licensed to operate vending facilities at the Terminal Annex, a building located in Denver, Colorado, and operated by the U.S. Postal Service. The Terminal Annex is a large building, four stories high and covering nearly an entire city block, where between 2,000 and 3,000 employees work. The building is open 24 hours a day, seven days a week.

In 1981 Harold Powell, a BEP-licensed blind vendor, was awarded the vending facility to be located at the Terminal Annex. This facility proved to be very lucrative for Mr. Powell, providing him a net income of between $84,000 and $86,000 during fiscal year 1985, compared to the average net income for Randolph-Sheppard operators of $28,743 in Colorado and $20,946 nationally. In February of 1986, shortly after Powell announced his intention to retire, BEP informed Colorado's Blind Vendors Committee of its intention to split the Terminal Annex into two vending facilities. The Committee, on March 27, 1986, unanimously issued a resolution objecting to the proposed division of the Terminal Annex.

In April 1986, BEP announced its decision to divide the Terminal Annex into two facilities for blind vendors. Hudson and Jack then requested, pursuant to 20 U.S.C. 107d–1(a), a formal evidentiary hearing on this decision. The Colorado Department of Social Services, which conducted the hearing, concluded that BEP had failed to consider a number of relevant factors in reaching its decision to split the Terminal Annex and ordered BEP to reconsider this decision and allow the Committee of Blind Vendors to participate fully in this process.

Hudson and Jack, however, filed a complaint for arbitration of this matter with the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a). An arbitration panel was convened, held hearings on October 19 and 20, 1987, and rendered its decision on December 14, 1987.

The Panel ruled that BEP's decision to divide the Terminal Annex into two vending facilities "did not violate the Randolph-Sheppard Act, any regulation issued thereunder or any policy then in effect" and rejected the conclusion of the Colorado Department of Social Services that this decision was based on "inadequate information." Eight specific substantive and procedural issues, involving policies and procedures established at both the Federal and State levels, were addressed in the decision. The Panel's rulings on these issues are as follows:

1. BEP's decision to divide the Terminal Annex into two facilities did not constitute illegal rulemaking under Colorado law. A rule, as defined by Colorado law, is a statement of general applicability. The decision to split the Terminal Annex, however, does not involve rulemaking because its effect is limited to that one case and is therefore not generally applicable.

2. The decision to divide the Terminal Annex did not constitute an unlawful limitation on income in violation of 20 U.S.C. 107d–3(a). This provision only applies to blind licensees who are currently operating a facility. Since Mr. Powell retired in May of 1986, there has been no licensee operating a vending facility at the Terminal Annex. The decision to split the Terminal Annex did not violate 20 U.S.C. 107d–3(a) because the income of no blind licensee was affected as a result.

3. The decision to split the Terminal Annex did not violate the requirement of 20 U.S.C. 107d–4 that blind vendors be given an opportunity to develop their maximum vocational potential. Precluding Hudson or Jack from having an opportunity to bid on a vending facility that has the potential of increasing their income from $40,000 to $80,000 does not violate this requirement. Moreover, it was reasonable for BEP to conclude that the best means of fulfilling this obligation towards all of its blind vendors is by increasing the total number of vending facilities.

4. BEP's decision to employ two blind vendors at the Terminal Annex does not violate BEP's policy against forced partnerships. The two vendors would not be, as the legal definition of partnership in Colorado provides, co-owners of a single enterprise, but operators of independent facilities that happen to be located in the same building. Any cooperation on pricing that the vendors might engage in would not preclude them from competing on other grounds or negate their status as operators of independent facilities.

5. The Randolph-Sheppard Act does not provide the Blind Vendors Committee with standing to participate in this arbitration proceeding. The relevant provisions of the Randolph-Sheppard Act, 20 U.S.C. 107d–1(a) and 107d–2(b), and its implementing regulations, 34 CFR 395.14(b)(2), only authorize blind vendors to file complaints for arbitration.

6. BEP did not violate the overall objectives and policies of the Randolph-Sheppard Act by its decision to divide the Terminal Annex into two facilities. The Act itself, in 20 U.S.C. 107(b)(2), specifically contemplates the location of more than one vending facility in Federal installations. Legislative history and policy interpretations issued by the U.S. Department of Education support the view that, where appropriate, more than one vending facility should be located in a Federal building.

7. BEP violated 20 U.S.C. 107b–1 by precluding meaningful participation by the Blind Vendors Committee in the decision to divide the Terminal Annex. This decision, however, was based on adequate information and did not constitute an abuse of the discretion on BEP's part.

8. Hudson and Jack are not entitled to damages or attorneys' fees. The conclusion and order of the Panel was that BEP's decision to split the Terminal Annex into two facilities did not violate any substantive provisions of the Randolph-Sheppard Act. The Panel, however, admonished BEP to allow the Blind Vendors Committee to have meaningful participation in future decisions. One of the three members of the Panel dissented from its decision, arguing that splitting the Terminal Annex eroded the income of blind vendors in violation of the basic purposes of the Act, which is to expand their opportunities. According to the dissenting panel member, such limitations have to be approved by the Secretary under 20 U.S.C. 107(b).

[FR Doc. 89–13514 Filed 6–6–89; 8:45 am]
BILLING CODE 4000–01–M

federal register

Wednesday
June 7, 1989

Part V

Department of State

Office of Munitions Control

Suspension of Munitions Exports to PRC; Notice

Department of State

DEPARTMENT OF STATE

Office of Munitions Control

[Public Notice 1109]

Suspension of Munitions Exports to PRC

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all licenses and approvals to export defense articles and defense services from the United States to the People's Republic of China pursuant to section 38 of the Arms Export Control Act are suspended effective immediately.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Licensing Division, Office of Munitions Control, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: All U.S. manufacturers and exporters are herby notified that the Department of State has suspended until further notice all licenses and approvals authorizing the export of defense articles or defense services from the United States to the People's Republic of China. This suspension includes manufacturing license and technical assistance agreements.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.7) in furtherance of the foreign policy of the United States.

In accordance with § 126.3 of the ITAR, affected U.S. persons desiring review of this decision with regard to a particular export in the interest of the security and foreign policy of the United States may petition the Director, Office of Munitions Control, within thirty days of publication of this Notice.

June 5, 1989.

William B. Robinson,

Director, Office of Munitions Control.

[FR Doc. 89–13716 Filed 6–6–89; 8:45 am]

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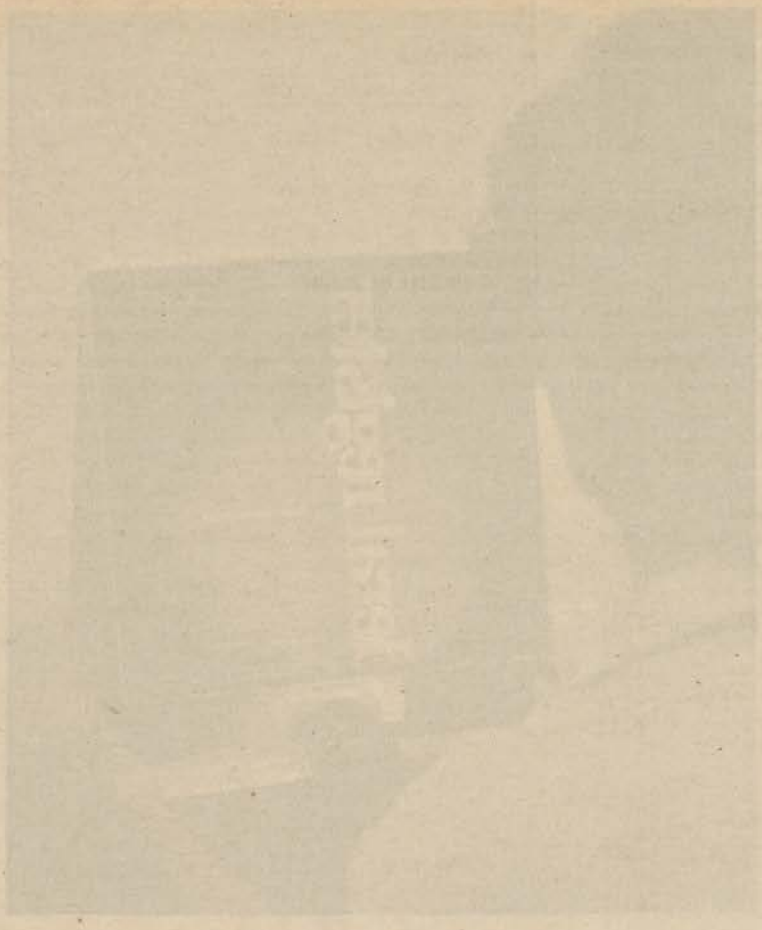

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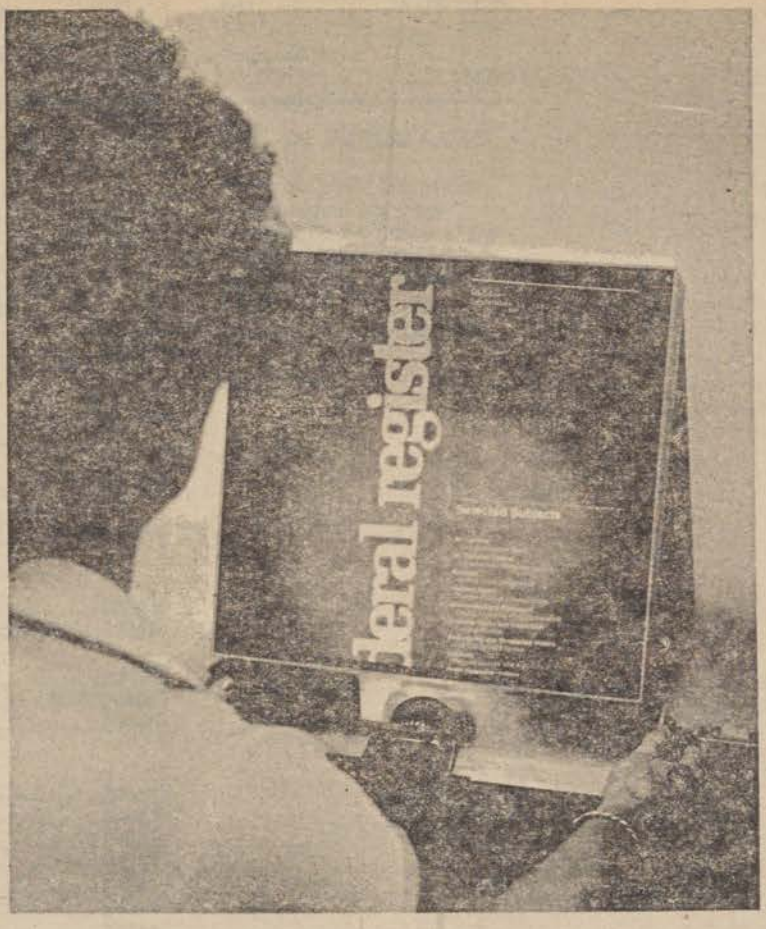

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